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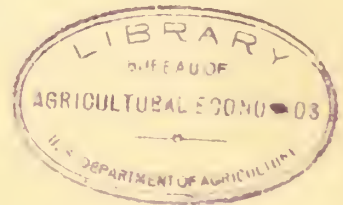
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COMPENSATION AS A MEANS OF IMPROVING THE
FARM TENANCY SYSTEM

By

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COMPENSATION AS A MEANS OF IMPROVING THE
FARM TENANCY SYSTEM 1/

One of the fundamental ideals underlying early American democracy was the widest possible diffusion of private property in land occupied by owner-operators in family-sized units. To this end the early land grants and land patents were made. The preemption laws and later the homestead acts were designed to attain the same objective. Yet as early as 1880 over 25 percent of the farms in the United States were operated by tenants. This proportion continued to increase until at present more than two-fifths of the farms are rented, and over one-half of the farm land is operated under lease. Thus, the original ideal has not been attained. A re-examination of our land policies and a study of the economic and social consequences of tenant farming indicate quite clearly that the recent concern over land ownership and farm tenancy is well founded.

The present philosophy of land ownership, including the whole concept of a practically unrestricted right of using the land as the "owner" desires, the holding of land for speculative purposes, the entail and inheritance laws, the rights of mortgaging and foreclosing, and the almost complete privilege of alienation, are matters which should be given careful study through adequate research. The research should be directed toward proposing remedial measures for any existing institutional maladjustment. The present tenancy system in its many diverse forms should likewise be studied more intensively and more completely than it has been in the past. This research should present concisely the nature and extent of the maladjustments of the system and should indicate appropriate corrective programs. There are, however, several tenancy studies and sufficient statistical evidence to indicate, without additional research, the existence of certain shortcomings in the tenancy system. These studies have been almost unanimous in recommending particular remedies which would prove worthwhile.

Compensation is one of the remedies so agreed upon. 2/ It has been repeatedly suggested with reference to several of the most obvious maladjustments. Moreover, it has been advocated by

1/ This monograph is based upon a research project initiated by the author in March 1935, under the auspices of the National Resources Board. The project was transferred to the Resettlement Administration the following August.

2/ See the writings of Gray, Black, Hibbard, Taylor, Holmes, Case, Falconer, Johnson, and others cited in the Selected References.

practically all recent students of the tenancy system, and has been recommended by various writers of agricultural economics textbooks and farm magazines. It has also been used successfully by leading landlords and tenants throughout the Nation, and it is an integral part of the tenancy system in several foreign countries. The leasing agreements both in this country and abroad in which compensation plays an important part represent outstanding examples of amicable, profitable, and conservative landlord and tenant relations.

This report is concerned only with those adjustments in the tenancy system which may be made through the use of compensation. It does not consider other adjustments either in the tenancy system or in State statutes governing the agricultural landlord and tenant. It is hoped that a later report including certain lease adjustments and regulatory measures will be forthcoming. Such a report would probably include suggestions with reference to the following requirements: that the tenant be permitted to remove at the termination of the lease all removable improvements effected by him; that all agricultural leases be written and follow a general form prescribed by law; that an accounting be made at reasonable intervals, upon request; that the lien laws be adjusted; that minimum standards applicable to rural houses which are rented be made compulsory; and that a simple inexpensive system of settling minor differences be established.

The objective of this report is to furnish a broad outline of the field of compensation and to supply part of the material which may be used by landlords, tenants, legislators, and others in formulating those parts of leasing agreements and State statutes pertaining to compensation. It does not indicate what compensation provisions particularly landlords and tenants should include in their leases; neither does it suggest how or with what speed each State should legislate with reference to compensation. Owing to the wide diversity of conditions throughout the country, these matters are left to the judgment of the individuals concerned.

The discussion will explain, however, the meaning of compensation, and will point out those landlord and tenant relations which it will improve. The principles laid down when defining compensation will be based upon the leasing agreements which have been developed by landlords and tenants in this country, and upon the older and wider experiences of landlords and tenants in foreign countries, particularly in England, Wales, and Scotland. The delimitation of those landlord and tenant relations which may be improved by compensation will be based upon the same experiences and will include a presentation of the immediate objectives to be gained through using it. The origin and historical development of

compensation, both in this country and in selected foreign countries, will be sketched. An analysis of the particular ways in which its widespread use would improve the tenancy system in this country will be presented, and the discussion will be concluded with a consideration of some of the legal aspects of such adjustments.

Chapter I

MEANING OF COMPENSATION

Based upon the experiences of landlords and tenants in the United States and in several foreign countries, compensation from a practical point of view may be divided into three categories, as follows: (a) compensation for improvements, (b) compensation for deterioration, and (c) compensation for disturbance.

Compensation for improvements refers to the payment which is made by the landlord or by the incoming tenant to the outgoing tenant for the unexhausted value of the improvements which the outgoing tenant made during his occupancy of the farm or for which he compensated the previous tenant with the consent of the landlord. The improvements may be in the form of buildings, fences, growing crops, plowed land, limestone or fertilizer spread on the farm, or additions to the farm home, garden, and orchard.

An actual case in which a tenant farmer was reimbursed for an improvement may be cited as an example. The landowner of a farm in central Illinois was confronted with the problem of building a dwelling for his tenant. He and the tenant agreed that with the available funds the best dwelling could be built if the tenant would dig the basement with his own labor and equipment, and if he would haul all the material from the lumberyard to the site of the dwelling. They further agreed that the tenant should be compensated for this work if the lease were terminated before he had used the dwelling long enough to reimburse him for his outlay -- in short, that he should be compensated for the residual value of that portion of the improvement which he had helped make. It happened that the tenant's lease was terminated before the dwelling was ready for occupancy. The landlord compensated the outgoing tenant, to the extent of several hundred dollars, for his expenses in helping to build the dwelling. The landlord required the incoming tenant to accept the same responsibility which the outgoing tenant had accepted, thereby transferring the cost of the compensation and the rights of the outgoing tenant in the improvement to the incoming tenant.

It is not often that agreements are reached whereby the incoming tenant accepts directly the responsibility of repaying the landlord for the compensation paid the outgoing tenant. There is, however, another method used in balancing the compensation to the outgoing tenant with requirements placed upon the incoming tenant. For example, under a typical situation of this type the landlord

pays the outgoing tenant a stipulated amount per acre for land which has been plowed for next year's crops, and then requires the incoming tenant to leave the same number of acres of land plowed. If weather conditions make this impracticable, or if the tenant for any other reason fails to do this, he pays the landlord a specified rate per acre for the deficiency. Of course, the landlord usually agrees to pay the tenant the same rate per acre for any excess. Similar arrangements are often made with reference to residual values of applications of limestone and fertilizers, and to certain growing crops, particularly small grains, temporary pastures, and legumes.

The payment for compensation for improvements is usually made at the time the tenant quits the farm, as was done in the case cited. The amount of the compensation is usually determined by the use of a prearranged schedule, by mutual agreement, or in case of disagreement by arbitration. In this country, it is usually based upon the cost of the improvement at the time it was effected, while in some other countries it is based upon the value of the improvement to an incoming tenant.

Compensation for deterioration 1/ refers to the payment which is made by the tenant to the landlord for any damage, deterioration, or dilapidation which the tenant may have committed or permitted during his occupancy of the farm. Many written leases contain provisions to the effect that "the premises shall be returned in as good condition as when the tenant entered upon them", and in the absence of such provisions the State statutes or the common law rule require that the tenant return the property to the landlord in the same condition as it was when he received it, normal wear and tear excepted. Therefore, theoretically all leasing agreements in this country, unless specifically provided otherwise, require compensation from the tenant for damage and waste. Actually, however, this requirement has been used, and from a practical point of view can be used, only in flagrant cases where significant waste is committed. Although the special provisions in the leases, the State statutes, or the common law rule have been used only in exceptional cases in this country, it appears that compensation for deterioration should be utilized more extensively, and in such a manner that it would effectively prevent year to year deterioration to tenant-operated farms.

Compensation for deterioration has been most effective in foreign countries when combined with compensation for improvements

1/ Deterioration as used in this manuscript includes waste, injury, damage, dilapidation, any impairment of the property not involving ordinary wear and tear, and changes not due to natural forces.

in such a way that any claim for improvements may be offset by any deterioration committed or permitted. Compensation for deterioration is usually payable at the end of the lease but may be payable, in extreme cases, at any time deterioration exists. In the latter case, the landlord does not wish to wait until the lease is terminated before the deterioration is brought to the attention of the tenant in an effective manner, and before he may claim compensation therefor.

The amount of compensation for deterioration and waste in this country is usually based upon an appraisal of the damage as determined by a trial before a jury. In several other countries it is based upon the decrease in the value of the farm to an incoming tenant owing to the deterioration, dilapidation, or waste.

Compensation for disturbance refers to the payment to the landlord or to the tenant for any damage or loss which may be caused by an undue termination of the lease or an unreasonable refusal to renew the lease. A typical case of compensation for disturbance in this country may be cited as an example. A landowner rented a farm in west-central Ohio for a period of five years, but he realized that something could happen during that time which would make it desirable that the lease be terminated. The lease, therefore, contained a provision that the landlord might terminate it at the end of any year, but if it were terminated at the end of the first year the landlord was to pay the tenant two hundred dollars (\$200) as damage, and if it were terminated at the end of the second year the sum would be one hundred and twenty-five dollars (\$125). A somewhat analogous arrangement has been written into the laws governing the landlord and tenant in England, Wales, and Scotland. In these countries if the landlord unduly terminates a lease, or even if he unreasonably refuses to renew a lease, he must compensate the tenant for disturbance.

The amount of compensation may be based upon a prearranged schedule as was done in the Ohio case, it may be based upon the loss or damage actually experienced, or it may be determined in some other way. In England and Wales the law requires that where any loss or damage exists, owing to the undue termination of the lease or to the unreasonable failure to renew it, the compensation shall be a sum "equal to one year's rent of the holding, unless it is proved that the loss and expenses so incurred exceed an amount equal to one year's rent of the holding", in which case the sum shall be equal to the whole amount incurred "up to a maximum amount equal to two years' rent". 2/ It is not often that

2/ Agricultural Holdings Act, 1923. Sec. 12(6). Copies of this Act are available upon request from the Land Use Planning Section, Resettlement Administration, Department of Agriculture, Washington, D. C.

tenants compensate landlords for disturbance when they unreasonably evacuate the premises. It appears, however, that both parties should be protected and should be bound by similar provisions.

At the present stage in the utilization of the principles of compensation as a means of improving farm leases in this country, there has not been fully developed among agricultural writers a clear understanding concerning which landlord and tenant relations are included in the concept of compensation. There are four different practices which have been used and which should be distinguished one from the other.

Under the first of these practices, the tenant is not required to pay either cash or share rent, but in lieu thereof he contracts to make certain improvements which are to become the property of the landlord at the termination of the lease. A part of the land in this country has been brought under cultivation and many buildings and fences have been constructed under arrangements of this type. Such arrangements have been disappearing rather rapidly during the last few decades. Agreements of this type were particularly effective in the earlier years of our agricultural development.

A second practice has grown up largely because of existing landlord and tenant statutes. Under these statutes, the tenant-operator is required to return the rented property to the landlord in as good condition as it was at the beginning of the lease, that is, he is legally required to make, without pay, all repairs to the farm improvements and to do certain other things which will preserve the farm in its original condition, normal wear and tear excepted. He is not reimbursed for the few repairs and improvements which he feels forced to make, and their unexhausted value accrues to the benefit of the landlord when the lease is terminated. Under these circumstances most tenant-operated farms are not improved as are owner-operated farms. In fact, many of them deteriorate little by little year after year.

A third type of agreement which has been practiced extensively since the turn of the century, and which may be described as an evolutionary or an intermediate stage in the development of the principles and practices of compensation, makes it possible for the tenant to effect certain specified repairs and improvements for which he will receive payment from the landlord when they are completed. The repairs and improvements are either described in the lease or they are agreed upon during the tenancy. The payment which the tenant receives is usually determined before the improvement is started, and it is made when the improvement is completed. The amount of the payment is not dependent upon the

length of time the tenant uses the improvement.

Under a fourth practice which has been growing rather rapidly during the last two decades, the landlord agrees to compensate the tenant for the unexhausted value of certain improvements should the tenant move before they are fully depreciated. The amount of the compensation is usually determined at the termination of the lease by agreement between the landlord and the tenant, by a board of arbitration selected by them, or according to a definite schedule which is set up in the agreement before the improvement is made. The cost of the improvement is usually used as the basis in determining the amount of compensation payable. There are cases under the fourth situation where the tenant is also effectively held responsible for deterioration, and where he is compensated for the loss which he may experience when he is requested to quit the farm prematurely.

Neither of the first two practices represents compensation for improvements, deterioration, or disturbance. The third or intermediate type of agreement should not be considered compensation, even though that term is sometimes used in speaking of an arrangement of that type. Practices of this kind usually arise out of the necessity of making major improvements which the landlord calculates can be more economically accomplished if the tenant's labor is utilized, or it originates under conditions where the landlord desires to furnish the tenant some work with a specific objective in mind. Usually this objective is to attract a good tenant to a poor farm, or to help the tenant pay cash rent which is out of line with current yields and prices. This type of arrangement is a pure contractual relationship existing between the landlord and the tenant for the performance of a specific task. The payment for the improvement is not contingent upon the extent to which the tenant may be privileged to utilize the improvement, neither is it based upon the cost of the improvement or its value to an incoming tenant. The fourth type of practice represents compensation as contrasted with the other three types of contractual relations.

The basic philosophy underlying compensation for improvements, deterioration, and disturbance is mutuality. Mutual advantage is given and mutual responsibility is required. The landlord, the tenant, the land, and the community are mutually protected when adequate compensation provisions are effectively utilized in landlord and tenant relations. The landlord is directly protected against any loss through damage to his property owing to the negligence of the tenant, and against undue evacuation by him. He is indirectly protected because of the tenant's superior farming which will result from the feeling of equity, stability, and

security. The tenant is protected against losses which may arise through the necessity of occupying the property without adequate improvements, and against leaving on the farm those improvements which he may find necessary to make without just recompense for their unexhausted value. The good tenant is also guaranteed a relatively high degree of stability of occupancy and security of tenure. He is protected against having to move from farm to farm year after year through no fault of his own. The land is protected to a certain degree against a shiftless tenant through effectively holding tenants responsible for deterioration. It is also protected against exploitative landlords through making it possible for the tenant to improve the land and buildings and to develop a system of farming which will maintain soil fertility. Furthermore, the community is protected through the presence of more stable and secure families who are interested in establishing relatively permanent homes and in identifying themselves with the various economic, social, religious, and political institutions of the community.

Chapter II

OBJECTIVES OF COMPENSATION

The practice of compensating tenant farmers for the unexhausted portion of the improvements effected by them has been followed by landlords with a variety of specific objectives in mind. Apparently each landlord has included in the leasing agreement a guarantee of compensation only for those improvements which he feels should be made on his particular farm, and which can be most economically effected by the tenant. He has made little or no endeavor to concern himself with problems which have a wider application, that is, with problems which affect the entire economic and social structure of the community but which are not closely tied up with his own individual situation. The recommendations and suggestions made by colleges of agriculture, experiment stations, and agricultural writers have often taken this broader viewpoint, and, therefore, have been more general and more inclusive. As indicated above, there are instances where compensation for unexhausted improvements has been practiced and recommended, but where compensation for deterioration and for disturbance were not a part of the provisions, and vice versa. These three phases are, however, so closely related and so interdependent that they will be discussed together. 1/

The fundamental objective of compensation is to place the tenant-operator, with respect to (a) the organization and the management of the farm, (b) the improvement of the farm home, and (c) participation in the activities of the community in a position as similar to that of an owner-operator as is reasonably possible.

The typical owner can organize and manage his farm on a long-time basis, and he can conserve and improve the farm resources with an assurance that some time in the future he will profit from these acts. Under the present leasing arrangements the relation of many tenants to the farms which they operate is quite different -- they can neither operate them on a long time basis, nor can they conserve and improve them, owing to the probability of having to move without reaping reasonable benefit from the extra labor and increased expenditures which are necessary. This is particularly true on share rented farms where the landlord will receive a share

1/ Some of the various types of compensation clauses which have been used in farm leases, and those which have been recommended by agricultural leaders are discussed in Chapter III, and are presented in Appendix A.

of the increased production due to extra effort on the part of the tenant. Even if the farm is leased on a cash rental basis and the tenant improves it, he will often experience an increase in the rental. In such case, he may either pay the higher rent or give possession to another tenant who is willing to do so, and the owner reaps the benefit accruing from the improvement effected by the outgoing tenant.

The owner-operator can spend much time and money in improving the farm home for he knows that he will enjoy the benefits of such improvement. The tenant-operator's lack of security of tenure makes it impossible for him to improve his home in the same manner and with the same assurance as does the owner. He is restricted to the making of only those improvements which are absolutely required in order to "get by" for the time being.

Furthermore, the owner-operator and his family, owing to their relatively high degree of stability and security, find it possible to affiliate themselves with the various religious, educational, and social activities of the locality, and within a few years to become an integral part of the life of the community. The exact opposite is true of many tenant families. Their instability of occupancy and insecurity of tenure often cause them to be slow in becoming attached to the various institutions in the community. This condition not only adversely affects the home and social life of the tenant and his family, but it seriously hampers the development of worthy institutions in rural America, particularly in areas where a large proportion of the farms is operated by tenants.

Organization and Management of the Farm

Under the prevalent system of leasing farm land from year to year, the tenant farmer does not have an adequate incentive, or even a reasonable opportunity, to build up or to conserve the rented property. This situation exists because the tenant is not assured that he will have the opportunity to profit by such expenditure of time and money as is required to conserve and to improve the farm. He may be forced to leave the farm before enough time has elapsed for him to receive the increased production which results from the improvements, and without being reimbursed for their unexhausted value. To be assured of such opportunity tenant farmers in the United States should be more stable and more secure in their occupancy of the farms, and they should be compensated for the value of the undepreciated portion of the prudent improvements which they make on the farms. Thus, the tenant-operator, with respect to the organization and the management of the farm, would be placed in a position similar to that of the owner-operator. This would aid in the conservation and in the building up of all the resources

on the rented farms, including the land, the buildings, the fences, and such miscellaneous items as roads, ditches, and water supply. It will also make it feasible for the tenant farmer to engage in improvement activities such as terracing, liming, and draining.

To illustrate, according to many of the more common leasing arrangements when a tenant and his landlord agree that alfalfa should be one of the crop enterprises on the farm, the landlord furnishes all of the alfalfa seed, one-half of the fertilizer, and all of the limestone. The tenant agrees to furnish one-half of the fertilizer, to haul the fertilizer and the limestone from the nearest railroad station, and to spread them on the land. He also agrees to prepare the seed bed, to sow the seed, and to care for the young alfalfa. If the tenant leaves the farm at the end of the year, he will have received little or no returns from his outlay of cash and labor and for the use of his equipment. Even if he leaves the farm at the end of the second year, he will not have received adequate compensation for the growing alfalfa which he leaves on the farm. The same holds true, to a lesser degree of course, if he leaves the farm at the end of the third year. In such cases the tenant is often inclined to feel that he has an interest in the alfalfa which he is leaving on the farm, and he naturally feels that the landlord has not treated him fairly. Even the incoming tenant often knows the history of the field of alfalfa, and he tries to protect himself against such a contingency arising in his relations with the landlord.

Would not the leasing arrangements in this country be greatly improved if under such circumstances the landlord would either agree to compensate the outgoing tenant for his interest in the growing alfalfa, or require that the incoming tenant do so? If similar things were done, would not many improvements be made on tenant-operated farms which are not made at present? Moreover, would not many tenants, if they were assured compensation, make many needed improvements when their landlords felt that their financial resources were not sufficient to permit an immediate outlay for the necessary improvement?

In the matter of repairing or improving permanent buildings, many tenants are deterred in expending much money or even in employing much labor owing to the lack of assurance that they will receive just recompense, either by being permitted to use the improvements which they make or by being compensated for them when the lease is terminated. The same holds true for fences, roads, ditches, and the water supply, and with reference to the farm woodlot, terracing, and the handling of the manure produced on the farm. Of course, the tenant will do a minimum amount of repair work and make a few improvements which are necessary to carry

him through the year, but these will usually be of a temporary nature; and he will effect only such other improvements as will return a profit to him during his prospective occupancy of the farm.

It might be suggested that but a very few tenants encounter situations under which they would improve the farm and have to move before they had an opportunity to utilize the improvement and, therefore, very little would be accomplished by adjusting our leasing system in this respect. A few data will prove enlightening. Tenant farmers in the United States use a considerable quantity of fertilizer and limestone, and add considerable fertility in the form of manure to the farms by feeding a large quantity of feed purchased off the farm. The Census of Agriculture reports that during the crop year 1929 some type of fertilizer or limestone was used on 930,354 tenant-operated farms at a total cost of \$100,257,672 (Table 1). There was also an expenditure of \$207,684,037 for feed on 1,042,627 tenant-operated farms during the same year. An average annual expenditure, per tenant-operated farm reporting such items, of \$108 for fertilizer and of \$199 for feed makes a total annual expenditure per tenant-operated farm large enough to be of significant importance in landlord and tenant relations even though the tenants supply only a part of the fertilizer and purchased feed. Since almost one-third of the tenant farmers in the United States in 1929 moved to new farms, the following year they left on the farms which they had occupied many dollars worth of unexhausted fertilizer, limestone and manure, and most of them received no compensation therefor.

Table 1. Expenditure for Fertilizer and Feed on
Tenant-Operated Farms in the United States, 1929. a/

Geographic Division	:Total expenditures of all :Average expenditure			
	: farms reporting :		:per farm reporting :	
	: Fertilizer :	: Feed :	:Fertilizer:	: Feed
	: (dollars) :	: (dollars) :	: (dollars):	: (dollars)
	:	:	:	:
New England	: 836,760 :	: 4,185,105 :	: 227 :	: 664
Middle Atlantic	: 5,135,294 :	: 20,827,299 :	: 163 :	: 521
East North Central:	: 7,571,483 :	: 33,594,629 :	: 91 :	: 215
West North Central:	: 1,231,577 :	: 65,214,098 :	: 69 :	: 264
South Atlantic	: 56,732,914 :	: 14,344,633 :	: 139 :	: 97
East South Central:	: 20,338,091 :	: 13,294,036 :	: 75 :	: 83
West South Central:	: 6,809,163 :	: 27,616,464 :	: 63 :	: 119
Mountain	: 108,859 :	: 8,543,155 :	: 111 :	: 337
Pacific	: 1,493,531 :	: 20,064,618 :	: 336 :	: 718
Total	:100,257,672 :	: 207,684,037 :	: 108 :	: 199

a/ Census of Agriculture, 1930.

This happens year after year, and it appears safe to assume that the situation is very similar with reference to other improvements.

Improvement of the Farm Home

The objective in placing the tenant-operator, with respect to the improvement of the farm home, garden, and orchard, in a position similar to that of the owner-operator, is to make it possible for him to effect certain improvements which pertain directly to the farm home, and to improve the home garden and orchard. Under many existing leases the tenant cannot make improvements to the present garden and orchard (if any) without the probability of having to move before being repaid for his expenditure. Neither can he improve the farm by making a new garden or orchard.

In the first place, many landlords will not permit valuable crop land, from which they receive a share of the crops, to be utilized as garden or orchard space, from which they receive no tangible income. On the other hand, if this were permitted, the tenant, under a typical lease, could not afford to start a family-sized orchard because he would be reasonably certain to have to leave the farm before the orchard came into production. The same holds true more or less for hot beds, for perennial garden plants, such as rhubarb and asparagus, and for small fruits such as grapes, strawberries, raspberries, and blackberries.

To this list of small but essential garden and orchard improvements which the tenant, under a typical lease, cannot afford to make, must be added a group of improvements which pertain more directly to the farmer's dwelling. Important among these items are electric lights, running water, a sanitary sewage disposal system, and an adequate cold storage space either in a basement or an outside cellar, together with shrubs and flowers, and all of those things involving the attractive landscaping of the farm home.

It is practically impossible for tenant farmers to provide for themselves these essentials. This impossibility is not due chiefly to their low economic status but arises mainly from the fact that they might have to move away and leave the improvements without being compensated for their undepreciated value, and without having an opportunity to use them over a period of years. This situation is owing chiefly to the year to year lease which may or may not be renewed, and which does not provide compensation for the improvements the tenant may make. The practical impossibility of the tenant's making certain improvements is evident when the available information is studied.

According to the Census of Agriculture for the United States, in the spring of 1930 the proportion of tenants who had automobiles was about three-fourths as large as the proportion of owners, while the proportion of tenants who had telephones was only one-half as large as the proportion of owners who had telephones (Table 2). The same comparison for water piped into the dwelling was one-third, and for water piped into the bath and for electric lights it was one-fourth. Thus, due partly to their lower economic status, tenants have not supplied themselves with certain conveniences and necessities as adequately as have owners but, owing chiefly to present leasing agreements, the tenants, as compared with the owners, have not supplied themselves with conveniences which are hard to remove as adequately as they have with conveniences which are easy to remove. Under the present system almost three-fourths as large a proportion of the tenants as of the owners can own automobiles, and they do own automobiles for they can take them along when they move. Furthermore, the telephone can be installed and removed relatively easily, while the water can be piped into the dwelling and the pipes can be removed less easily. It is difficult if not impossible, however, to move a bathroom or remove electric wiring and use it again even if permitted to do so by State law. It is plain that as the object becomes harder to move, owing to its physical attachment to the landlord's property, a smaller and smaller proportion of the tenants in relation to the proportion of the owners have supplied themselves with such essentials.

The relation between the proportion of the tenants and the proportion of the owners who can enjoy such necessities and conveniences varies somewhat from one section of the country to another and also from State to State, but the general tendency holds true throughout the entire country. For example, in the West North Central States where there are many tenants of a relatively high economic status, approximately the same proportion of the tenants as of the owners has an automobile, but a smaller proportion of the tenants than of the owners has a telephone, a still smaller proportion has water piped into the dwelling, and still a smaller proportion has water piped into the bath or has electric lights. Again, in the East South Central States, where the tenant's income is relatively low, only about one-half as large a proportion of the tenants as of the owners has an automobile, a still smaller proportion of the tenants than of the owners has a telephone, a still smaller proportion has water piped into the dwelling, and still a smaller proportion has the other two conveniences (Table 2). A study of individual States reveals the same tendency with striking consistency.

A recent extensive survey of rural housing conditions in Iowa substantiates this analysis of the data presented in Table 2. The

Table 2. Significant Indices Regarding the Farm Home of Owner and Tenant Operators ^{a/}

Geographic Divisions and States	Percentage of farms reporting--											
	Automobile			Telephone			Water piped into dwelling			Water piped into bath		
	Owner	Tenant	Ratio	Owner	Tenant	Ratio	Owner	Tenant	Ratio	Owner	Tenant	Ratio
United States	65.9	47.5	72.1	43.2	21.4	49.5	21.8	7.2	33.0	12.1	3.1	25.6
New England	60.7	59.7	98.3	61.2	52.8	86.3	64.0	56.8	88.7	25.5	21.5	84.3
Middle Atlantic	70.8	73.3	103.5	46.0	39.4	85.7	39.0	29.8	76.4	18.4	11.6	63.0
E. North Central	78.4	83.2	106.1	58.5	56.5	96.6	23.2	17.9	77.1	10.6	6.4	60.4
W. North Central	82.1	83.9	102.2	68.9	59.4	86.2	19.1	11.7	11.3	10.9	4.7	43.1
South Atlantic	51.8	31.7	61.2	18.2	3.2	17.6	10.2	1.7	16.7	6.4	0.9	14.1
E. South Central	40.8	21.8	53.4	24.0	4.9	20.4	4.7	0.7	14.9	3.1	0.4	12.9
W. South Central	58.5	37.9	64.8	29.6	8.4	28.4	14.9	3.7	24.8	9.4	1.5	15.9
Mountain	66.2	72.5	109.5	29.2	24.7	84.6	21.9	13.3	60.7	12.4	5.6	45.2
Pacific	75.2	77.3	102.8	42.8	32.0	74.8	60.8	54.3	89.3	44.9	33.7	75.1
Pennsylvania	70.1	72.3	103.1	43.3	37.2	85.9	38.3	29.3	76.5	15.7	9.9	63.1
Ohio	77.0	83.0	107.8	57.9	47.6	82.2	31.2	23.3	74.7	12.6	6.5	51.6
Kansas	87.2	88.0	100.9	79.0	64.5	81.6	22.0	9.9	45.0	13.2	4.1	31.1
Montana	72.9	72.1	98.9	21.7	15.5	71.4	12.2	7.7	63.1	6.0	3.2	53.3
Colorado	74.8	78.6	105.1	42.6	34.2	80.3	23.5	14.5	61.7	12.5	5.7	45.6
Mississippi	45.3	19.4	42.8	14.4	1.4	9.7	4.8	0.4	8.3	3.6	0.3	8.3

^{a/} Census of Agriculture, 1930.

^{b/} Ratio, as used, means the relation between the percentage of owners and the percentage of tenants reporting the specified items. For example, for the United States as a whole, the percentage of tenants reporting automobiles was 72.1 percent as large as the percentage of owners reporting automobiles.

relationship between the tenure of the farm operators and the type of conveniences found in the farm homes of Iowa is significant. The homes of tenant farmers, of course, had fewer of the conveniences than the owners' homes, owing to their lower economic status, but the tenants' homes were much more like the owners' homes with reference to movable equipment than they were with reference to non-movable equipment. Quoting from this survey, "Non-owners have supplied themselves more fully with refrigerators and washing machines than landlords have provided them with structural conveniences. In general labor-saving facilities the owners exceed the non-owners by 36 per cent; for the labor savers which are a part of the house structure, the difference is 50 per cent." 2/

Similar conditions were found to exist in other surveys of housing conditions and home conveniences in several sections of the country. For example, in a series of surveys including 2,871 owners and 1,973 tenants it was found that the proportion of tenants who had oil stoves for cooking was 68.7 percent as large as the proportion of owners who had oil stoves. The same comparison for vacuum cleaners was 57.3 percent, while for running water in houses it was 37.7 percent, and for bathrooms it was 31.7 percent. 3/ The former two items are easy to move while it is difficult to move the latter. A similar survey of 115 tenant and 270 owner farms in Faulkner County, Arkansas, reveals the same tendency. A smaller proportion of tenants than owners had automobiles and telephones, a still smaller proportion had sinks and no tenants had running water or electric lights. 4/

The Census data, and also the data presented in the Iowa housing survey and in the other studies, indicate quite clearly that tenant farmers would provide themselves with more of the conveniences which are so essential in the American standard of living, if only they were given an opportunity either to use these conveniences over a period of years, as do owner-operators, or to receive just compensation for them when they had to leave them on the farms from which they were moving. It is recognized that the level of income of the tenant-operator will generally remain below that of the owner-operator. Such a differential is normal and may be expected to continue. It does not appear, however, that the tenancy system should further unnecessarily handicap the tenant in these respects. Thus, an immediate objective

2/ Reid, Margaret G. STATUS OF FARM HOUSING IN IOWA. p. 351.

3/ United States Department of Agriculture. YEARBOOK 1923. p. 582.

4/ McCormick, T. C. FARM STANDARDS OF LIVING IN FAULKNER COUNTY, ARKANSAS. p. 15.

of compensating tenant farmers is to make it possible for the tenant-operator to supply himself with the essentials of farm life in much the same manner as an owner-operator as far as his income will permit. This may be accomplished by improving the leasing arrangements and strengthening the laws regulating landlord and tenant relations.

Many landlords are beginning to realize the importance of adequately providing for the items mentioned above, and are solving these problems in several ways. They are either assuring the tenant a high degree of permanency of occupancy, writing provisions in the lease which provide for compensation, or making the improvements themselves. Some landlords are often combining two of these methods; that is, they make the improvements which require a relatively large outlay of capital and leave to the tenant the opportunity of making those improvements which require a relatively large outlay of labor. These practices have increased rapidly during the last decade and are most important insofar as the individual landowner is concerned, but they are also of importance insofar as the public is concerned, since they are doing much in conserving the national resources and in developing a more satisfactory rural population.

Participation in the Activities of the Community

The placing of the tenant-operator, with respect to participation in the activities of the community, in a position similar to that of the owner-operator, will make it possible for the tenant to develop into a more useful citizen, and for him and his family to enlarge their religious, educational, and social activities. Of course, this can be accomplished only by increasing the stability and the security of tenant families. Landlords have been interested in these phases of tenancy chiefly as they relate to their individual farms, while agricultural leaders have been concerned with them in relation to the whole field of farm tenancy and land use, as well as to the general welfare of rural communities and their social and religious development.

At one time the prevailing opinion regarding agricultural leasing was that the relations between the landlord and the tenant are of little concern to the public, and that the benefit or loss from these relations affects only the landlord and the tenant. It is becoming more generally recognized, however, that this is not the case. It is true that there are some grounds for the opinion that there should be free and open bargaining between the landlord and the tenant in regard to those phases of the lease which affect only the two parties concerned. But, when this bargaining ceases to be free and open, and just as soon as it begins to influence other

individuals or to affect future generations, the problem becomes one of public concern. The stability and the security, or to use the terms more descriptive of the existing situation, the instability and the insecurity of the rural tenantry, are closely related to the public welfare. The future of the rural church, the rural school, and the various social institutions in many rural communities are closely tied up with the stability of the farmers in those communities, and with the degree of security with which they occupy their farms.

Instability and insecurity have been thought of generally as the same phenomenon, and have been discussed under the same heading, being termed instability, insecurity, or both according to the likes and dislikes of the individual. They are, however, two separate and distinct things and should be distinguished, one from the other, even though it is difficult to assign to each separate and distinct evils.

Instability refers to the shifting process, that is, the actual moving of the tenant families from farm to farm. The wagons and trucks going down the road, about the first of January or the first of March, loaded with household furnishings, food and feed supplies, and farming equipment, are evidences of instability. Insecurity refers to the mental reactions of the individual tenant, the uncertainty of the future, the lack of reasonable assurance that he will be permitted to live in the same house and operate the same farm the coming year, and the next, and the next. The lack of long-time planning on tenant-operated farms with the resulting soil depletion and deterioration, and the restricted participation of tenant families in the various activities of the community are evidences of insecurity.

Instability can be measured rather accurately while it is practically impossible to evaluate the extent of insecurity. Instability, as measured by the number of years the tenants have occupied their farms at a particular time, is reported by the Census. The acuteness of this phase of our tenancy system is partially understood when it is realized that in the spring of 1935 more than one-third (34.2 percent) of the tenant farmers in the United States were in the first year of occupancy on the farm they were operating (Table 3). At the same time about one-eighth (13.1 percent) of the tenants were in the second year of occupancy. Thus, almost one-half of the tenants in the United States had been occupying the farms they were operating in the spring of 1935 for one year or less, while less than one-tenth of the owner farmers were under such circumstances. Further, the proportion of farmers who had been occupying their farms for more than fifteen years was approximately six times larger for owners than for tenants. What is

Table 3. Percentage Distribution of Farm Operators by Term of Occupancy and Tenure of Operator for the United States, by Geographic Divisions, 1935. a/

Geographic division	Term of Occupancy and Tenure of Operator													
	Less than 1 year		1 year		2 to 4 years		5 to 9 years		10 to 14 years		15 years and over		Owner	Tenant
	Owner	Tenant	Owner	Tenant	Owner	Tenant	Owner	Tenant	Owner	Tenant	Owner	Tenant	Owner	Tenant
United States	5.9	34.2	3.9	13.1	13.2	24.1	17.2	14.7	15.3	6.8	44.5	7.1		
New England														
Middle Atlantic	4.2	24.9	3.5	14.4	12.7	25.3	18.4	16.8	17.2	8.1	44.0	10.5		
East North Central	4.6	25.1	3.7	14.2	12.6	24.8	17.5	16.5	17.8	9.2	43.8	10.2		
West North Central	4.8	24.2	3.9	14.1	12.6	25.3	15.5	16.8	15.1	9.2	48.1	10.4		
South Atlantic	4.9	23.4	3.6	13.6	11.5	25.4	15.6	18.5	14.2	9.5	50.2	9.6		
East South Central	6.1	38.4	3.7	12.3	13.1	23.7	17.1	13.1	15.4	6.0	44.6	6.5		
West South Central	6.9	39.4	3.9	13.3	14.4	23.4	18.2	12.6	15.5	5.6	41.1	5.7		
Mountain	8.6	40.6	4.3	12.0	13.9	23.0	18.6	13.8	14.2	5.5	40.4	5.1		
Pacific	5.9	32.3	4.0	15.4	14.7	25.2	19.4	15.4	13.8	5.8	42.2	5.9		
	6.7	32.3	4.7	15.4	15.4	25.1	20.7	14.6	17.6	6.7	34.9	5.9		

a/ Census of Agriculture, 1935.

worse, instability among tenant farmers is apparently becoming more acute rather than decreasing, whereas the tendency among owner farmers is in the opposite direction.

Of the two evils, instability and insecurity, it appears that the latter is the more insidious. Many tenants have experienced stability of occupancy, that is, they have remained on the farms they operate for ten years or more. Yet they do not have a feeling of security -- they do not know whether they will have to move within a year or so -- they have a sense of apprehension which probably affects their operation of the farm more than the knowledge that they will move at a definite time. Tenants report that about the time they begin to feel secure in their position on the farm some unimportant misunderstanding arises and the landlord may dispel the feeling of security in a single day. Long-term occupancy does not mean security. The two tend to go hand in hand, but a feeling of security among tenant farmers does not necessarily arise out of long-term occupancy. Thus, under the present tenancy system, where the good tenant has no guarantee that he will be permitted to remain on the farm over a period of years, the feeling of security is conspicuously absent and the feeling of insecurity is practically unanimous.

Instability of tenant tenure, except that arising out of the sale of the leased property, does not appear to be based upon major considerations, but arises out of many trivial and personal matters. For example, it is seldom that either the tenant or the landlord has a controversy regarding the shares of the crops each is to receive. They accept the custom of one-half, two-fifths, or one-fourth without question. Many shifts, however, are based upon feelings of dissatisfaction which arise out of requests by tenants for such things as a brooder house, a small line of fence, some repairs for the windmill or pump, paper for the living room, and a screen door; or from small requirements by landlords such as cutting brush at a particular time of the year, storing of the landlord's grain in space normally reserved for the tenant, directing minor farm operations in detail, and trying to influence the tenant's vote on special local problems.

Owing to instability, that is, the moving from farm to farm, the economic and social losses which result are very important, and they have been studied by a few agricultural economists and rural sociologists. The impossibility of making and carrying into effect long-time plans, the unfamiliarity with the new farm to which the tenant moves, the cost of moving, and the maladjustment through loss of identification with a particular church, school, or any other social institution is fairly well recognized. However, the deterrent effect of insecurity is not fully appreciated. Even

though the tenant may occupy the farm for a long time, the feeling that his lease may be terminated at the end of any year, without cause and without recompense, leads him to refrain from making many improvements on the farm which he will not fully and completely utilize before the end of the year. He is also loath to identify himself adequately with community activities from which he may be required to sever connections when the lease is terminated.

The existence of instability and the feeling of insecurity will have to be eliminated, to a marked degree, from our system of agricultural tenancy before it can develop to its greatest usefulness. Many agricultural writers have discussed methods of making tenancy more stable and more secure. Their recommendations can be divided into two general categories, those which can be carried out by the individual landlord and those which can be best performed by society. The former relates to the improvement of leasing agreements between the landlord and the tenant, while the latter relates to the strengthening of landlord and tenant statutes. Both contain the concepts of compensation.

Many landlords and tenants are doing their part to make such adjustments as are necessary to render tenants more secure and more stable. A continuation of the use of compensation in this regard appears certain. However, the public interest in the matter points toward a revision of landlord and tenant law so that compensation will be practiced by all agricultural landlords and tenants. Through this process, the relation of the tenant-operator to the land he tills, to the home he is building, and to the community in which he lives, will be made as much like that of the owner-operator as is reasonably possible, and the rural tenantry will not be unduly hampered in their social and economic progress.

Chapter III

HISTORICAL DEVELOPMENT OF COMPENSATION

The use of the principles of compensation in leasing farm land in this country dates back at least to the first part of the nineteenth century. Early colonial records regarding the economic organization of agriculture are rather meagre; therefore, it is difficult to determine just when landlords began the practice of compensating their tenants for the improvements which they were unable to utilize fully before the termination of the lease. Records indicate, however, that some landlords followed the same methods which had proved successful in some of the older European countries, and that there was some similarity between the early leases in this country and contemporary European leases. For example, in 1810 Richard Peters communicated with Doctor James Mease, Secretary of the Philadelphia Society for Promoting Agriculture, regarding the contents of the leases which he had been using successfully on his farms for a period of fifteen years. Along with the communication Peters presented extracts from the leases, two of which pertained directly to the problem of compensation. They were in part as follows:

"If lime be put on the last year of the term, (or the first year, if tenant leaves the place at the end of it) and tenant receives no adequate benefit, - compensation is to be made for hauling. The landlord is to pay cost at the kiln, for all lime hauled by the tenant. . . . If tenant leaves the farm, or dies, before reaping the benefit of any manure he has hauled, compensation is to be made. All differences to be left to referees, mutually chosen." 1/

These provisions are very similar to those found in some of the better English leases of that period. The general development of compensation has come about, however, in rather recent years. The agricultural colleges and experiment stations in this country began to publicize compensation as a means of correcting some of the most obvious weaknesses of the tenancy system only during the last two decades. The United States Department of Agriculture, and various agricultural economics textbooks and farm magazines, have also taken a part in bringing the principles of compensation before agricultural landlords and tenants. The agricultural

1/ "Heads of Richard Peters's Leases to Tenants on Shares", Peters, Richard. MEMOIRS OF THE PHILADELPHIA SOCIETY FOR PROMOTING AGRICULTURE. pp. 269-270.

colleges and experiment stations have recommended some phases of compensation in their formal publications regarding the leasing of agricultural land, and they have distributed lease forms which contain provisions regarding compensation. The compensation concept was also suggested by them in radio talks, public discussion, and private communication. The United States Department of Agriculture during the last two decades has recommended compensation in several publications and has suggested that it be used in specific cases in which their counsel was requested. Several of the leading agricultural economics textbooks have given considerable space to landlord and tenant relations, and have recommended compensation as the most promising plan of correcting some of the shortcomings of present day leasing arrangements. Some farm magazines have described successful landlord and tenant leasing agreements in which the principles of compensation were used, and have suggested lease forms which contain provisions for compensation.

Literature

A study of the literature regarding agricultural leasing indicates that compensation has been recommended by practically all the leading agricultural writers who have considered methods of improving certain phases of the tenancy system. The concept of compensation for improvements has been given chief consideration, while compensation for deterioration and for disturbance has been recommended in only a few of the more complete discussions of the tenancy system. Compensation for improvements such as limestone, fertilizer, and seeding has been recommended by a majority of the writers. Compensation for improvements such as buildings, fences, roads, and drainage has been suggested, but not so often. Compensation with reference to deterioration and to disturbance has been suggested by many writers, but has not been recommended with as much emphasis as has compensation with reference to improvements.

The recommendations regarding compensation made by the colleges of agriculture and the experiment stations have been restricted largely to the most pressing tenancy problems within the particular State making the recommendations. Those in the Wheat Belt States have been chiefly concerned with improvements in the form of fertilizers, small grain seedings, and plowing and tillage operations. The recommendations made in the Corn Belt States refer to applications of limestone and fertilizers and to legumes seeded, while some reference is made to drainage and buildings. The Tobacco Belt and the Cotton Belt recommendations are very similar to those of the Corn Belt, except that drainage is not mentioned and permanent grasses usually replace legumes. As a general rule, compensation for buildings, fences, and roads is added to the list in the sections of the country which have been settled longest. Thus,

in the newer sections of the country the recommendations relate to short-time improvements, in the middle-aged sections more improvements relating to the upkeep of the soil have been added, while in the older sections, where the first set of buildings has become old and need much repairing or replacing and where fencing is more important, such items have been added to the recommendations.

The recommendations made by the United States Department of Agriculture and those found in the agricultural economics textbooks are usually general in nature and more nearly cover the entire field of compensation, while the recommendations made by the farm magazines usually are similar to those made by the agricultural colleges within the States in which the magazine circulates.

While there has been no consistent recommendation regarding how the amount of the compensation should be determined, the general thought running through the literature appears to be that the tenant should be paid for the cost of the improvements less the depreciation which has taken place since the improvement was effected. The phrase, "labor not included", found in several of the suggestions, indicates the small value placed upon the tenant's labor, and there is a tendency for some writers to feel that the tenant's labor need not be included when determining the value of the improvement. Labor is, however, the major cost of many minor improvements which the tenant should be encouraged to make, and should be included when determining the value of the improvements. Many of the recommendations have apparently been based upon a superficial knowledge of the English system of compensation. Several of the suggestions have been based upon practices in this country, however, and they indicate that there is a definite trend in the direction of a wider acceptance of the principles involved and a constantly increasing number of leases which include such provisions.

Extension Work

The agricultural extension service in the several States has fostered, from time to time, landlord and tenant conferences. As far as could be determined, the extension workers in the Corn Belt States have done more work of this type than those in other sections of the country. These extension conferences were held for the most part during the economic recession immediately following the World War. They were designed to develop a better relationship and a closer cooperation between the landlords and the tenants. The tenants were extremely interested in the meetings, and desired to cooperate to better their leasing conditions. The landlords, however, appeared to feel that they were destined to lose whatever the tenants gained, and many felt that things were already satisfactory.

and that no discussions or suggestions were needed.

The type of conferences held under the auspices of the extension service in Illinois is typical of some of the early landlord and tenant conferences. Most of them followed the same general plan, which may be described as follows: An all-day meeting of tenants and the extension representative was held the first day. Then, the next day, the landlords met with the extension representative. There was no overlapping permitted, since it was decided that each group would feel more freedom in discussing its leasing problems if representatives of the other group were not present. Free, constructive discussion was encouraged, and a confidential stenographic report was taken. Three members from each group were appointed to serve on a joint landlord-tenant committee.

The joint committee met several times to discuss problems which had been brought to the attention of the group, to consider the stenographic report, and to prepare a set of recommendations. After these recommendations were completed, a county-wide meeting of landlords and tenants was called. At this meeting the recommendations were reviewed, discussed, amended, and adopted. Generally, there were about ten recommendations made by each of the various county landlord-tenant committees. One of these recommendations usually considered the problem of compensation. A typical one is as follows:

"This committee believes that limestone should be used for legume production where soils are sour, and that rock phosphate should be plowed under with manure and clover. It is recommended that the landowner shall furnish such fertilizers, and that the tenant shall haul same. Some arrangement should be made whereby the tenant is paid for any unused mineral fertilizers that he shall have applied to the soil from which full benefit has not been received when he leaves the farm." 2/

The plan followed in other Corn Belt States was somewhat different but the same types of problems were considered. There were discussions and recommendations regarding compensation during most of these meetings. It appears that as soon as economic conditions got better meetings of this type became infrequent and the attention of agricultural leaders was attracted elsewhere.

2/ Report of Christian County Landlord-Tenant Joint Committee. November 23, 1921. Files of the Department of Agricultural Economics, University of Illinois, Urbana.

Leases

An analysis of 37 farm leases which included some phase of compensation indicates that a wide variety of compensation provisions has been used by agricultural landlords and tenants in this country. While it is difficult to summarize the various ramifications of these provisions, a tabular analysis of the frequency with which the various types of provisions were included, and a brief description of these provisions is presented. A tabular analysis is presented in Table 4. 3/

The "general provisions" with reference to compensation for improvements, as classified in Table 4, are usually intended to include all those things that the outgoing tenant does in good faith, which will be of value to the incoming tenant, and which would result in obvious injustice to the outgoing tenant if he were not compensated therefor. Generally, no enumeration of the types of improvements is made, and no method of calculating the amount of the compensation is included. The provision usually specifies though, that in case the two parties cannot agree, arbitration of the customary type shall be used, and shall be binding.

It appears that insurance companies and some private individuals desire to provide a method of gaining immediate possession of the leased farm "in case of sale". To do this they write into their leases a clause providing for compensation to the tenant when he is requested to move. The provision usually specifies that the lease shall be terminated by the landlord when desired, and that the compensation shall be calculated on the basis of the value of the growing crops and other specific items, when the lease is terminated.

Only two of these leases mentioned compensation for improvements made to the "land". These clauses provided for compensation for labor expended on hauling tile and on pulling stumps, in case the tenant left the farm before he realized upon the labor thus expended.

The concept underlying the provisions regarding "plowing and tillage" appears to be based upon the thought that the outgoing tenant should leave at least as much plowing and tillage on the farm as he found when he moved upon it, or when such is not possible he should pay the landlord a specific amount per acre for the difference. It should be noted that in these cases the tenant compensates the landlord in place of the landlord compensating the tenant.

3/ The compensation provisions from a few of the leases used in this analysis are presented in Appendix A.

Table 4. Classification of Improvements for which Compensation was Provided in 37 Farm Leases in which some Form of Compensation was Included

Type of Compensation Provisions	Col-lege	Man-ager	sur-ance	Land-Com-pany	Priv-vidu-al	Farm-Mag-azine	Total Num-ber
Number of leases	10	6	6	2	11	2	37
General provisions	4	0	1	1	1	12	17
In case of sale	1	0	1	1	1	1	5
Land: labor only	1	-	-	-	1	-	2
Plowing and tillage	3	-	1	2	1	-	7
Manure: labor only	1	-	-	-	1	-	2
Buildings:							
Material	4	2	-	-	2	-	8
Labor	5	3	1	-	3	-	12
Limestone:							
Material	4	1	-	-	1	1	7
Labor	4	2	-	-	2	1	9
Rock Phosphate:							
Material	4	-	-	-	-	1	4
Labor	4	-	-	-	1	1	6
Fertilizer:							
Material	3	-	-	-	-	1	4
Labor	4	-	-	-	-	1	5
Seedings:							
Material	5	1	-	-	1	-	7
Labor	6	-	-	-	3	-	9

Only a few of the provisions recognize that the tenant may leave more plowing or tillage than he found, and made stipulations whereby the landlord would pay the tenant a specific amount per acre for the difference.

Two of the leases provided compensation for labor expended on "scattering manure". They are apparently based upon a recognition of the fact that one method of assuring the proper preser-

vation and utilization of the manure is to compensate the outgoing tenant for his labor on the unused portions of it.

The provisions regarding "buildings" refer chiefly to labor since the landlord usually furnishes the material. Some of them recognize, however, that a certain amount of material supplied by the tenant may be used. These provisions are usually very general in nature.

Compensation for labor expended on "limestone" is surpassed in importance, as judged from the frequency with which it is included, only by compensation for labor on buildings and for seedings. The typical provision states that the tenant shall be paid a stipulated amount for each ton of limestone spread; the amount to be reduced by one-fifth each year the limestone is utilized. Compensation for "rock phosphate" and for "fertilizer" is based upon the same concept as those underlying compensation for "limestone".

Compensation for "seedings" is important in many of the provisions designed to reimburse the outgoing tenant for unexhausted improvements. The clauses generally include payment for both the seed and the labor. Compensation is more common for such legumes as alfalfa and for the grasses than for small grain or for clover.

As a rule, the leases distributed by the colleges of agriculture have recommended compensation for a wider range of improvements than other groups. Apparently, their idea has been to suggest a variety of clauses from which individuals could select those adaptable to their particular cases. Farm magazines have followed very closely the same principles as the colleges of agriculture. The professional farm managers and private individuals have included also a wide variety of improvements. The individuals in both groups have endeavored to solve their particular problems; therefore, little uniformity as to content exists. The land companies have adhered to the same policy. The compensation provisions used by the insurance companies have dealt chiefly with cases involving the sale of the property as previously discussed.

Many of these leases, and also many other leases, have some provisions which are designed to prevent deterioration of or dilapidation to the rented property. The most common type of provision states that the tenant shall operate the farm in a good husbandlike manner. Frequently another provision is added which requires the tenant to return the property in as good condition as when he received it, and in most leases still another provision is designed to enforce these two requirements. These clauses

provide nothing more than common law requires. It is peculiarly significant, however, that neither the common law concept nor the specific provisions regarding compensation to the landlord for deterioration is generally enforced, and that many tenant-operated farms deteriorate year after year.

Compensation for disturbance was not provided for in any of the thirty-seven leases mentioned above. There are, however, leases which provide for compensation in case the lease is terminated before the time specified. Such cases are infrequent and are usually found in leases for a period longer than one year. In such situations it is clear that the landlord and the tenant recognize the advantages of stability of occupancy and security of tenure but do not feel it advisable to enter into a contract for a period of years without a method of terminating the contract during that period.

Statutes

The compensation concept has been recognized by the Federal Government in several ways. It was first written into the preemption laws. These laws related to the rights of individuals who had settled upon and improved a parcel of land. The present law regulating the grazing of the public domain, and certain phases of the recent production adjustment contracts between individual farmers and the Secretary of Agriculture, each represent a type of compensation. In addition, the law designed to prevent damage and waste is a direct recognition of compensation. Obviously the practice of putting these principles into operation is not the same as those involving compensation for improvement, deterioration, and disturbance in ordinary leasing arrangements. They have been founded, however, upon the same philosophy, and represent a recognition of the same right.

In 1828 the Public Lands Committee, in a report to the House of Representatives, sanctioned the philosophy of compensation as represented in the preemption laws as follows:

"It is right and proper that the first settlers, who have made roads and bridges over the public lands at their own expense and with great labor and toil, should be allowed a privilege greater than other purchasers. It cannot be denied that these settlers increased the value of contiguous lands of the United States. By this means an additional amount of sales of the public land is realized to the Government. It is just and proper that he who renders a benefit to the public, who by his enterprise and industry has created

for himself and his family a home in the wilderness, should be entitled to his reward." 4/

It is likely that if the same Committee were reporting on our system of land tenure today it would paraphrase the above so that the report would read as follows: It is right and proper that the agricultural tenants, who have improved the buildings and fields of the landlords at their own expense and with great labor and toil, should be compensated for these improvements. It cannot be denied that these tenants increased the value of the lands of the landlords. By this means an additional amount of rental from the demised land is realized by the owners. It is just and proper that the tenant who improves the property of the landlord, who by his enterprise and industry has created for himself and his family a better home on the rented land, should be entitled to compensation when unduly evicted.

An Act, known as the Taylor Grazing Act, passed by the 73rd Congress of the United States on June 28, 1934, includes a provision for compensating tenants for improvements made by them. The Act is entitled, "An Act to stop injury to the public grazing lands by preventing over-grazing and soil deterioration, to provide for their orderly use, improvement, and development, to stabilize the livestock industry dependent upon the public range, and for other purposes." It provides that the applicant for a permit to graze public lands shall pay the prior occupant a "reasonable value" for such improvements as the prior occupant may have made. The "reasonable value" is to be determined under rules and regulations of the Secretary of the Interior. This Act has not been in effective operation long enough to indicate the influence of the compensation provision. This provision is, however, a clear recognition of the right of the outgoing tenant to compensation for improvements made by him.

The Agricultural Adjustment Administration's recognition of production bases established by tenant farmers, and their rights in such bases, as well as the justice of allotting to them a proportion of the benefit and adjustment payment, was a recognition of the tenant's right to an "improvement" effected by him. It was evident early in the administration of the Act, that many injustices would result if tenants were evicted without consideration of their rights. Therefore, an effort was made to safeguard these rights, and to distribute benefit payments according to production bases which had been established in previous years, regardless of the tenure of the individual. The requirement for constancy in the

4/ "Pre-emption Rights in the Choctaw District in Mississippi." p. 401.

number of tenants on each of the contracting farms also was a recognition of the tenant's rights and an endeavor to assure to the tenants, as a group, some degree of permanency of occupancy -- to assure them that some of their number would not be evicted because of a decline in the number of acres rented, owing to the adjustment program.

Compensation for waste and deterioration has been recognized since the early days of common law. This concept was strengthened by the Statute of Marlbridge and the Statute of Gloucester in the thirteenth century and has been redefined and made more explicit through various State statutes in this country and through provisions in the leasing agreement. In spite of the State statutes, the common law rule, and the provisions of the lease, many tenant-operated farms deteriorate to a certain extent year after year, until the soil is seriously depleted, the fields eroded, the buildings dilapidated, and the fences in very poor repair. This is particularly true of farms which have been operated by tenants over a period of years. Each succeeding tenant returns the farm to the landlord in worse condition than when he received it, and the landlord does not require, and apparently is not able to demand effectively, that the tenant return the property in as good condition as it was when he leased it. The following are three important reasons why this condition is so common: (a) Some landlords are interested in the farms only as a source of income and, therefore, are not immediately concerned with deterioration; (b) much deterioration to any particular improvement is so gradual and so small in any one year, that the landlord cannot make a case against the tenant for deterioration under existing statutes; and (c) many tenants are negligent about maintaining the farm in its original condition, because they know that it is improbable that they will be held responsible for deterioration or that they will be compensated for any improvement which they may make.

The only serious attempt in this country to approach the problem of compensating tenants for unexhausted improvements through State legislative action was made in Illinois immediately following the World War. The Governor, in his message to the Illinois General Assembly in 1919, placed the problem before the legislators. He indicated that it was necessary to safeguard tenants' rights in improvements made by them. The necessity of protecting the tenant, as the Governor explained it, arose when landlords increased rents upon improvements made by the tenants; or when they unjustly evicted tenants at the expiration of the leases, without compensation for improvements, and before enough time had elapsed to make it possible for the increased income to repay the outgoing tenants for the improvements. The first step to carry out these suggestions was made by the introduction, into the General Assembly, of a

bill designed to encourage the growing of legumes and the utilization of limestone and rock phosphate on tenant farms, by providing compensation for these improvements. This bill was defeated when it was reported from the Senate Committee on Agriculture with the recommendation that the bill should not pass.

This failure did not stop those who understood the problems involved. Two more attempts were necessary before a substitute bill was passed. The substitute bills were designed to create a commission to investigate tenant conditions. The first bill was introduced into the Senate early in the session and was tabled. The second bill, introduced into the House late in the session, was passed. This bill was entitled, "An Act to Create an Illinois Farm Commission, to Define its Powers and Duties, and to Make an Appropriation Therefor." The Commission was composed of the Director of Agriculture and four others appointed by the Governor. Seven hearings were held in various parts of the State. These hearings were attended by tenants and landlords. On the basis of the findings at these hearings, and with the advice and counsel of Dr. B. H. Hibbard, Professor O. G. Lloyd, and others, four recommendations were made. One of the recommendations dealt with compensation. It was as follows:

"Second, with the large percentage of tenancy in this State, the tenant necessarily is an important factor in maintaining the soil, and he should be encouraged and protected in his efforts to do so. Therefore, your commission would recommend a 'tenant's rights' law, properly safeguarding both the rights of the landlord and tenant, to encourage the tenant to build up the soil and the farm generally. This law should provide for reimbursement of the tenant, on the termination of his lease, for the improvements he puts on the land with the consent of the landlord. It should also protect the landlord against the unnecessary destruction of his property by a careless tenant. This would encourage both good landlords and good tenants." 5/

On the basis of this recommendation a bill entitled, "An Act Relating to Farm Tenants and to Encourage Soil Improvement on Tenant Farms", and which provided compensation for tenant farmers who made certain improvements on the farms operated by them, was passed by the Senate in 1921, but was tabled in the House. The defeat of this bill ended the attempt in Illinois to legislate for the compensation of tenant farmers for unexhausted improvements.

Compensation in Other Countries

The problem of improving agricultural leases has also attracted the attention of agricultural leaders in several foreign countries. In recent years much of their attention has been directed toward an improvement of the legal relations between the landlord and the tenant. Apparently their idea has been to establish broad regulations safeguarding the interests of both parties. The compensation concept has proved to be the outstanding principle which has been utilized consistently. It has been flexible enough to operate successfully under diverse agricultural conditions and during violent economic changes. It has not only protected the landlord and the tenant, but it has been a factor of importance in the conservation of the land resources, and in the establishment of well-integrated communities where it has been practiced.

Great Britain has probably accomplished more in this regard than any other European country. English, Scottish, and Welsh tenants are renowned for their stability in the community, for their development of crops and livestock, and for their superior system of farming. The Belgian and French landlords and tenants who utilize the principles of compensation in their leasing arrangements present outstanding examples of good landlord-tenant relations in their respective countries. The success of these practices has been so pronounced that Belgium recently (1929) passed a national law providing for compulsory compensation for the entire nation. The Belgian law is similar in many respects to the English compensation law. France has been considering similar legislation on a national scale. The Swiss Federal Code and the Civil Code of Portugal provide compensation for the outgoing tenant who has made certain improvements on the farm. Compensation provisions are also written into farm leases in some parts of Italy, while the compensation provisions of some methods of leasing farm land in certain districts in India approximates very closely the compensation provision laid down in English law. Also, as provided in the Mexican Civil Code of 1928, the agricultural tenant of Mexico is compensated for improvements made by him. 6/

A description of the manner in which compensation has been employed in improving the farm tenancy system in each of these countries would be too long to be included in this paper. It appears valuable, however, to review briefly the experience of England and Wales in improving their farm tenancy system.

6/ International Institute of Agriculture. "Agricultural Legislation". INTERNATIONAL REVIEW OF AGRICULTURE. pp. 213-219.

The commercialization of agriculture and the concentration of wealth which took place during the seventeenth and eighteenth centuries transformed England and Wales into a country of large landowners, and an unregulated system of tenancy took the place of owner-operation. Under this unregulated system the rights of the tenant were quite restricted. Even as late as 1850, if the tenant's lease were terminated, he could not remove fixtures or other improvements which he had made during his occupancy of the farm, and he did not have any right in crops which he had sown but which were not harvested. Neither could he force the landlord to compensate him for the fixtures and the improvements which he had made nor for the growing crops which he had sown. By law the landlord could evict the tenant whenever he pleased, he could increase rents as he saw fit, and even the fundamental rights of the tenant to kill game were abrogated by enactments of a Parliament composed chiefly of landowners. The landlord completely dictated the system of farming to be followed and the time and the manner in which the produce should be sold. The uncontrolled system of tenancy was truly one developed by a particular economic group, to safeguard the vested interests of that group, and without regard to its economic and social effects upon the country as a whole.

The unregulated farm tenancy system in England and Wales finally proved ill-adapted to the new progressive system of agricultural production, and leading landlords began to liberalize their leases in many respects. Later they joined with political leaders to enact statutory regulations which would improve the tenancy system. The leases were liberalized to the extent of permitting the tenant to remove, or to be compensated for, improvements made by him and of guaranteeing him that he would not be unduly evicted. The right of the tenant to kill certain game was also restored to him, and he was compensated for any damage done to his crops by game he was not permitted to kill. The first liberalizing statute was enacted in 1851. This statute gave the tenant the right to remove fixtures and buildings effected by him, and it also recognized the tenant's rights in growing crops. Between 1875, the date of the next important Act, and 1923 there were enacted a series of more than a dozen Acts, which placed the tenant operator in a position as much like that of the owner-operator as reasonably possible.

The Act passed in 1875 provided for statutory compensation for the unexhausted value of a specific list of improvements made by the tenant. The Act was permissive, however, and many landlords forced their tenants to accept contracts which circumvented its provisions. The amount of the compensation for the unexhausted improvements was to be based upon the cost of the

improvement. In the few cases where the Act really operated, the policy of basing the amount of the compensation upon the cost of the improvement proved unsatisfactory. The improvements made by some tenants were not well-adapted to the farms, and their cost represented a sum larger than the value of the improvement as an income-producing instrument. Other tenants were not careful to buy at the lowest market price and to expend a minimum amount of labor on the construction of the improvement; thus, they made the cost of the improvement somewhat larger than it should have been.

Both of these shortcomings -- the permissive nature of the Act and the method of determining the value of the improvement -- were remedied by the Agricultural Holdings Act of 1883. Compensation was made compulsory by this statute and the landlords could not force their tenants to contract out of the provisions of the Act, neither could the tenants alienate their rights to claim compensation for improvements. The Act also provided that the amount of the compensation should be the value of the improvement to an incoming tenant. Under this concept of valuation the cost of the improvement was not important and the landlord did not have to compensate the tenant for improvements which were not adapted to the farm. It should be noted that the term "an incoming tenant" was used instead of "the incoming tenant". This protected the outgoing tenant against the possibility that the incoming tenant might want to use the farm in such a way that a particular improvement which was made by the outgoing tenant would be of very little value, and also against the possibility that the owner might reoccupy the farm or the farm might be sold to an owner-operator, in which case there would be no incoming tenant.

These changes proved highly satisfactory, and as the provisions of the Act were fully utilized by a large proportion of the tenants, and as experience indicated the fine adaptability of compensation as a means of improving the leasing agreements, there appeared certain circumstances and conditions which called for additional legislation. The first of these situations which was given legislative consideration pertained to compensation when a mortgagee took possession of the farm. Under the rules in force at that time the mortgagee coming into possession of the farm could immediately evict the tenant of the mortgagor and take possession of the tenant's improvements, growing crops, and fixtures without compensating the tenant for anything. The Tenant's Compensation Act of 1890 made it impossible for the mortgagee to evict the tenant without six months' notice, and put the mortgagee in the same position as the landlord with reference to compensation.

In 1895 market gardeners were accorded special privileges with respect to compensation. The improvements listed under the

1883 Act did not include all those which market gardeners usually made on their farms, and it did not classify the improvements in such a manner that the gardeners could make essential improvements without the landlord's consent. The Market Gardeners' Act of 1895 remedied these two shortcomings in a satisfactory manner by increasing the number and the kind of improvements for which market gardeners could claim compensation and by reclassifying the improvements.

Some of the provisions of these three Acts which were not definite as to meaning were clarified in an Act passed in 1900, and their scope was extended to include more improvements. Other rights and duties of both the landlord and the tenant were more definitely defined, and a system of settling differences between landlords and tenants was established.

Tenant farmers in England and Wales were still shifting from farm to farm too frequently, and it appeared that statutory action would be necessary to prevent unreasonable and unwise moving. To this end the Agricultural Holdings Act of 1906 was passed. This Act provided that under specific circumstances the tenant could claim statutory compensation when his lease was unduly terminated or when the landlord unreasonably refused to renew his lease. The circumstances under which the tenant could claim compensation for disturbance were more definitely defined by subsequent Acts, and in 1920 the minimum amount of compensation for disturbance was set as one years' rent; if it could be proved that a larger cost or loss was experienced, the amount could be increased up to two years' rent, but never above that amount.

In order to make effective the provisions respecting disturbance, and to adjust more equitably landlord and tenant relations, the 1920 Act also set up a method of arbitration with respect to rent. This Act made it possible for either the landlord or the tenant to request arbitration as to the amount of rent to be paid for the farm. If the tenant refused to arbitrate, the lease could be terminated by the landlord without liability for compensation for disturbance, and if the landlord refused, the tenant could quit the farm and claim compensation for disturbance as if the landlord had terminated the lease. Although this did not provide compulsory rent arbitration, it has, in actual operation, proved an effective method whereby a fair and equitable rent can be determined. Many other provisions of less importance, more clearly defining the rights and the duties of the two parties, were included in the legislation between 1883 and 1920. All of these provisions and those discussed above were brought together in the Agricultural Holdings Act of 1923, and at present agricultural landlord and tenant relations in England and Wales are regulated

by statute providing for compensation for improvements, deterioration, and disturbance. These regulations have put the tenant-operator, with reference to the operation of the farm, in a position as much like that of the owner-operator as appears reasonably possible. He has been assured that he will be justly reimbursed for any increase in the value of the farm which results from his own effort, he has a relatively high degree of stability of occupancy and security of tenure, he may operate the farm as he thinks best, and he is effectively held responsible for any deterioration to the farm during his occupancy. 7/

A study of the origin and development of compensation in all the countries mentioned above reveals several important tendencies, as follows:

1. There was not one country in which the early laws regulating the leasing of agricultural land required that the landlord compensate the outgoing tenant for improvements made by him or for disturbance when his lease was unduly terminated or when its renewal was refused. The old common law concept which held that the tenant should return the demised property in as good condition as it was when he received it was generally recognized. It was very seldom, however, that the out-going tenant was held responsible for deterioration.

2. There has been a very rapid increase in the use of the compensation idea in these countries during the past fifty years.

3. Compensation was first used between the better landlords and tenants, and later it was enacted into law or given legal sanction through court decisions and judicial doctrine.

4. As the rights of the tenants became more

7/ A more complete discussion of compensation as utilized in England and Wales and in Scotland may be found in the following publications: (a) Harris, Marshall. AGRICULTURAL LANDLORD TENANT RELATIONS IN ENGLAND AND WALES. Land Use Planning Publication No. 4. Resettlement Administration. July 1936. (b) Harris, Marshall and Schepmoes, Douglas, F. "Scotland's Activity in Improving Farm Tenancy". LAND POLICY CIRCULAR. Resettlement Administration. February 1936. These publications have been combined and reprinted as Land Use Planning Publication No. 4a, which is available upon request.

fully recognized and were extended through statutory action, the responsibilities of the tenants with respect to deterioration of the rented property were progressively increased; thus, the land and the improvements thereon gradually became more adequately safeguarded and finally came to be protected in such a way as to prevent the tenants from taking undue advantage through the new recognition accorded them.

5. Both the customary leasing agreements and the statutes providing for compensation have reconciled the conflicting interests between the landlords and tenants, with respect to improvements, by requiring an expressed or implied consent of the landlord before improvements could be effected, or by limiting the improvements which the tenants can make to a specified list. A combination of these two methods has been used in some countries. In addition, improvements effected by or deterioration caused by natural forces are not subject to the compensation provisions.

6. Compensation for improvements and for deterioration have been introduced first, and as they have proved satisfactory, the compensation concept has been expanded to include compensation for disturbance.

7. There is a tendency to arrange the compensation payments, especially those for improvements, in such a way as not to cause financial embarrassment to the landlord. This is accomplished in some cases by requiring that the incoming tenant reimburse the outgoing tenant, and in other cases by determining the amount of and fixing the time of payments for compensation in such a way that the increase in the production of the farm, resulting from the improvements will make it possible for the incoming tenant or the landlord to meet the payment without contracting a large outlay of capital.

PLACE OF COMPENSATION IN THE TENANCY SYSTEM

The customary leasing arrangements differ widely from one section of the country to another and with the differences in the dominant type of agricultural production. The relation of the landlord to the tenant, and the influence of that relationship upon the utilization and the conservation of the farm is quite different on the cotton-producing farms of the South, with their sharecroppers and share tenants, from that existing on the dairy farms in the Chicago-Milwaukee milkshed, with their cash and share tenants. Because of differences of this type, it is impossible to outline in detail each of the items for which compensation should be payable, and to present a comprehensive picture of the manner in which compensation would operate if it were more generally utilized, or if it were applied to all tenant-operated farms through State statutes.

Therefore, each landlord and tenant should adapt the principles of compensation to his particular leasing situation, and each State should adjust the compensation provisions which may be included in its statutes to the conditions on its tenant-operated farms. Furthermore, each State legislature should use discretion in the enactment of compensation legislation and in the establishment of machinery necessary for its proper administration. This may involve a gradual evolution of the statutes so as to include ultimately the broad principles outlined below. A desirable beginning may be small and amendments may be added from time to time as experience indicates. Thus, compensation provisions may vary from State to State but the general objective should be determined before the legislative action is started in order to give continuity to the program.

There are a few broad principles and certain specific procedures generally applicable under most circumstances. They are outlined below, and should be given careful consideration in the development of an educational or a legislative program.

Compensation provisions, whether made a part of a lease between private individuals or written into the laws of a State, should be divided into the following three categories, which were defined in an earlier section: (a) Compensation for improvements; (b) compensation for deterioration; and (c) compensation for disturbance.

Compensation for Improvements

According to common law any improvement which the tenant may make accrues to the benefit of the landlord, the tenant being prohibited from removing it. Some States have adjusted this obviously harsh rule, and now permit the tenant to remove any removable improvements effected by him. This is a very worthwhile adjustment, and may well be made by all the States. There are, however, many fixtures and improvements which the tenant may use on the farm which are not physically and economically removable; for example, a well, a terrace, a fence, or limestone spread on the fields. Therefore, the tenant should be accorded the privilege of leaving certain specified fixtures and improvements on the farm and of receiving compensation for them when the lease is terminated.

The improvements for which compensation should be payable, whether mutually agreed upon in the lease or made compulsory by State statutes, may be subdivided into three major divisions according to the degree of freedom with which the tenant can effect the improvement. The improvements included in each of the three divisions are not intended to cover all conceivable improvements which may be necessary. Furthermore, they may be shifted from one division to another as experience may indicate or as conditions may vary from one State to another. The improvements assigned to each of these divisions, however, should be specifically set forth. The following are the three divisions and the improvements which may be included in each category. 1/

I. IMPROVEMENTS TO WHICH CONSENT OF LANDLORD MAY BE REQUIRED.

1. Erecting, altering, or enlarging permanent or temporary buildings such as the dwelling, barn, poultry house, piggery, granary, machine shed, and silo.
2. Constructing or removing permanent fences.
3. Establishing permanent pasture.
4. Constructing major works of irrigation and drainage.
5. Reclaiming waste land.
6. Planting orchards, small fruits, and perennial garden plants in excess of those necessary for family use.

1/ For the list of improvements for which the English and Welsh tenant is assured compensation, see Appendix B.

7. Laying down tile.

8. Planting woodlots.

9. Adding household fixtures and equipment such as electric lights, bathroom, wallpaper, paint, running water, and storage space.

II. IMPROVEMENTS TO WHICH NOTICE TO LANDLORD MAY BE REQUIRED.

1. Constructing terraces, check dams, and other erosion control devices.

2. Making or improving roads and bridges necessary to make the property accessible.

3. Making or improving ponds, wells, reservoirs, and other works for the supplying of water for agricultural or domestic purposes.

Provided that the tenant may not claim compensation for the improvements effected in this category in excess of some specified proportion, perhaps from five to ten percent, of the total rent which the tenant paid the landlord during the tenancy. 2/

III. IMPROVEMENTS TO WHICH CONSENT OF OR NOTICE TO LANDLORD MAY NOT BE REQUIRED.

1. Repairing of permanent or temporary buildings or fences which are necessary for the proper operation of the farm, excluding improvements which the tenant is customarily under obligation to execute.

2. Planting and protecting orchards, small fruits, and perennial garden plants not in excess of those necessary for home use.

3. Establishing temporary pasture, meadow, or other seeding.

4. Plowing or preparing the land for next year's crop.

5. Applying lime, marl, rock phosphate, or other fertilizers

2/ It should be recognized that tenants occasionally contract to make improvements in lieu of rent or for other considerations, and that transactions of this type are not included in the definition of compensation as outlined in Chapter I.

or purchased manure which results in a residual benefit to the land after the termination of the lease.

6. Manure appropriately spread on the farm which was produced from feedstuff either bought by or belonging to the tenant.

Compensation for improvements is divided into these three major divisions in order to distribute properly the control over the organization and the management of the farm between the landlord and the tenant. According to the provisions of the first division, the landlord is given the balance of power with respect to the more permanent and costly improvements, and those which materially and permanently affect the farming unit. The landlord and tenant both are accorded some control over the making of the less permanent improvements as outlined in the second division; while the tenant is free to effect the more temporary improvements which conserve and improve the farm, and which require a relatively large outlay of labor as compared with capital.

With respect to those improvements which are included under the first division, the relations between the landlord and the tenant as they generally exist under the present systems of renting agricultural land would be changed but little. According to most leases and State statutes the landlord and the tenant can agree to any arrangements regarding the making of improvements which they consider desirable. This is exactly the same situation which would exist with reference to all improvements included under the first division; the landlord could make the improvement at his own expense, he could refuse to make the improvement or to permit the tenant to make it, he could agree with the tenant upon terms under which the tenant could make the improvement, or he could let the tenant make the improvement under an agreement that they would wait until the tenant left the farm before determining the amount of compensation. In addition, he could tell the tenant that it would be satisfactory for him to make the improvement, or he might even encourage him to make it, and not come to any agreement as to a final settlement -- then upon the termination of the lease he could require that the tenant leave the improvement on the farm without compensation for it. Of course, this latter situation could not arise if a general compensation clause, which follows the principles herein discussed, were included in the leasing agreement or if such were made compulsory by State statute.

To effect any improvement included under the second division, the tenant would send a notice to the landlord of his intention. When the landlord receives the notice he should be accorded the

privilege of effecting the improvement, and if he does not desire to do so, the tenant should be able to make the improvement and receive compensation therefor at the termination of the lease. Of course, if the landlord at his own expense makes any of the improvements included in the first division with the consent of the tenant, or any of the improvements in the second division after receiving notice from the tenant, he should have authority to charge a higher rental than that agreed upon in the original contract. The increase in the rental should be a sum which would represent a nominal interest charge and normal depreciation on the improvement. If the tenant makes the improvement, the rental should not be increased thereby.

The tenant should have the privilege of making any of the improvements included in the third division without consulting the landlord, and he should receive compensation for them at the termination of the lease. The method of determining the amount of compensation will be discussed in a later section.

Compensation for Deterioration

The general rule of common law with reference to deterioration, is that the tenant should return the rented property to the landlord in as good condition as it was when he received it, normal wear and tear excepted. The State statutes regarding deterioration generally contain the same provisions, and in the absence of State statutes the common law rule is followed. In addition, many leases contain requirements that the tenant "farm the property in a good and proper manner", or "farm the land in a husband-like manner", or "return the farm in as good condition as when he entered upon the premises, ordinary wear and depreciation excepted".

The deterioration for which compensation should be payable, whether mutually agreed upon in the lease or made compulsory by State statutes, should include all waste, injury, damage, dilapidation, or impairment of the property not involving ordinary wear and tear or changes due to natural forces. In order to be more specific, deterioration may be classified as follows:

- I. DETERIORATION TO THE LAND AND THINGS PERTAINING DIRECTLY THERETO.
 1. Removal of earth and minerals.
 2. Permitting the land to become infested with noxious weeds and shrubs.
 3. Undue destruction of trees and timber.

4. Permitting the filling up or falling into disrepair of the tile and other systems of drainage and irrigation.
5. Failure to repair roads and bridges.
6. Improper care and use of manure.
7. Following a more intensive cropping system than that provided in the contract or customary in the community.
8. Negligent farming and poor husbandry.

II. DETERIORATION TO BUILDINGS AND FIXTURES.

1. Erection, removal or alteration of buildings and fences resulting in a diminution of the value of the property.
2. Negligent care of gardens and orchards.
3. Permitting the falling into disrepair of ponds, wells, reservoirs, and other works for the supplying of water.
4. Improper use of or negligent care of the dwelling and household fixtures and equipment.
5. Failure to repair as provided in the contract or according to custom.

The tenant should be held responsible for deterioration, that is, for the decrease in the value of the farm, owing either to passive or to positive action on his part. It is improbable that the tenant can be or will be held responsible for deterioration, except in very flagrant cases, as long as he is not compensated for improvements. A provision in the leasing agreement or in the State statutes should effectively require maintenance of the property, and should provide a procedure whereby any claim for deterioration or waste would be offset by any improvement which had been made to the farm, and whereby any claim for compensation for improvements would be offset by any deterioration to the farm. Obviously, improvements or deterioration caused by natural forces such as floods and cyclones, that is, those forces over which the landlord or the tenant has no control, should not be included.

The payment should be made when the deterioration occurs if it be of such a nature that the tenant cannot repair the damage or if he fails to do so within a reasonable time after having the deterioration called to his attention. The amount of deterioration

should be determined in the same manner as the value of an improvement. This will be explained in a subsequent section.

Compensation for Disturbance

The common law rule, the State statutes and the leasing agreements in this country, require that the tenant be permitted to remain in possession of the property, with certain exceptions, until the end of the lease. They seldom require that either party agree to a renewal. The necessity of many tenants' making a new leasing arrangement each year and the laxity of regulations with reference to improvements and deterioration has done much to perpetuate the rapid shifting of the rural tenantry from farm to farm year after year. This high degree of instability should be prevented, and increased security of tenants should also accompany increased stability.

There appear to be two alternatives if necessary progress is to be made -- either the lease must be written for a much longer period, or the tenant must be reimbursed for the loss or damage experienced when he is unduly evicted or when the landlord unreasonably refuses to renew the lease. In addition, the landlord might well be reimbursed for the loss or damage he experiences when the tenant unduly quits the farm or when he unreasonably refuses to accept a renewal of the lease.

Many landlords are not inclined toward long-term leases, desiring to retain some method of terminating the lease at the end of any year. The year-to-year lease is the answer to this requirement. The year-to-year lease, however, is such a handicap that some landlords, who know the advantages of stability and security, have endeavored to improve their leases by including in them a provision that they will be renewed each year unless one of the parties, within a reasonable time before the termination of the lease, notifies the other to the contrary. Other landlords have given long-term leases with a provision that they may be terminated at the end of any year by either party giving due notice. Both of these provisions tend to make tenants more stable. They do not, however, increase the security of the tenure of the tenant farmer.

There have been made, however, worthwhile adjustments in this matter. Relatively long-term leases, usually for about five years, have been granted. The privilege of terminating the lease at the end of any crop year is usually reserved and it is agreed that if the lease is terminated the tenant will be compensated for the inconvenience and loss which he experiences. Generally, the amount of the compensation is definitely set forth in the lease, and it

is usually graduated so that the amount is large if the lease is terminated at the end of the first year and gradually becomes smaller each year thereafter. 3/ This type of provision has gone a long way toward making the tenants more stable in their occupancy of the farms and has given them a feeling of some degree of security.

If such requirements were made a part of the lease contract, or if they were incorporated in a State statute, the general provision should provide that all agricultural leases be drawn for a minimum period of five years, terminable at the end of any year by either party upon the payment for the inconvenience or loss sustained by the other party resulting directly from the termination of the lease; provided, however, that termination may be made at the end of any lease year, by either party giving six months' notice, without payment for inconvenience or loss when any of the following conditions exist:

1. The tenant is not cultivating the farm according to the rules of good husbandry.
2. The tenant's rent is delinquent.
3. Either the landlord or the tenant is legally bankrupt or the property is foreclosed.
4. The death of the landlord or the tenant has occurred within three months prior to the notice of termination.
5. The land, or a significant proportion thereof, is taken under eminent domain proceedings.
6. The landlord or the tenant has caused a breach in the lease, which is not remedied after notice.
7. The landlord desires the farm for the purpose of farming it himself.

A relatively long-term lease, for five years or even more, with a provision for its termination at the end of any crop year, upon the giving of sufficient notice and the payment of damages for disturbance, is adaptable to the leasing system in this country and may well become a fundamental part thereof. The landlord or tenant should be permitted to terminate the lease under certain conditions noted above. In addition, it may eventually prove

3/ For an example of a provision of this type, see Appendix A.

necessary to enlarge and refine these conditions. The amount of compensation should be based upon the actual loss or damage experienced, and should be determined in a manner agreed upon between the two parties or as provided by State statute.

Valuation and Arbitration

As has been indicated above, in a large proportion of the leases providing compensation for unexhausted improvements, the cost of the improvement less normal depreciation has been used as the basis for evaluating compensation when the tenant leaves the farm. Also, some of these leases have specifically excluded the value of the tenant's labor from the cost of the improvement. In respect to those improvements for which the cost of the material and the skilled labor used in their construction is relatively large, there is little loss to the tenant if his labor is not included. There is considerable loss to the tenant, however, if his labor on the majority of farm improvements is not included. It appears that the tenant's labor should not be excluded in the valuation of unexhausted improvements.

There are, in general, four principles which may be used as a basis for evaluating the amount of compensation which is due the outgoing tenant for the unexhausted portion of improvements effected by him during his occupancy of the farm. They may be designated briefly as follows: (a) original cost; (b) reproduction cost; (c) prudent investment cost; and (d) value to an incoming tenant.

Probably the easiest plan to use is the one which is at present used by many landlords and tenants, that is, the original cost of the improvement less normal straight-line depreciation. There are, however, several apparent reasons why this plan is not equitable under many situations. In the first place, the tenant may have paid more than the current market cost, at the time the improvement was made, for the material or for the labor, and if he were assured cost of production less depreciation there would be little incentive to be efficient in the construction of the improvement. Also, under such situations the tenant might not properly consider the adaptability of the improvement to the farm. For example, limestone might be added where it was not needed, or too much might be used. Furthermore, if the improvement were effected during a period of high prices, this method of valuation would require that the landlord or the incoming tenant pay more for the improvement than either the cost of replacing the improvement or the increase in the current earning capacity of the farm, owing to the improvement. And, if the improvement were constructed during low prices, the outgoing tenant's reimbursement would

possibly be much below replacement cost or current earning value. In the last mentioned situation the landlord would find it advantageous to dispossess the tenant, paying him for the cost of the improvement less depreciation, and then to rent the farm at a higher rental owing to the improvements which he purchased at a price below current market value.

The plan used in valuing public utilities, in order to determine what rate should be charged to return a reasonable income on the investment, could be used in determining the value of the unexhausted improvements. This plan may be described briefly as follows: The value of the property is the reproduction cost new less observed depreciation and less improvements or those parts of improvements which are not used in serving the public. This plan approaches very closely the requirement for valuing farm improvements. It would, obviously, work hardship upon the tenant who made improvements during a period of high prices, and would be favorable to the tenant who made improvements when a low price level prevails. Furthermore, "reproduction cost new less depreciation" implies an evaluation based upon the prevailing prices of materials and labor, and does not adequately take into account the present earning capacity and the immediately prospective increase in the earning capacity owing to the improvement, or the use value of the improvement. Under such a method of valuation the landlord may be able to increase the rent out of proportion to the value placed on the improvement, or he may find that the improvement cost him more than it increased the renting value of the farm.

A third basis for valuation sometimes suggested may be summarized as follows: Prudent cost at time of construction less depreciation (as determined by schedule or by observation) and less improvements, or those parts of improvements, not adapted to the particular situation. The fundamental shortcomings of this method of valuing farm improvements are similar to those outlined above. Legitimate or prudent cost at time of construction less depreciation implies an evaluation based upon the cost of materials and labor at some time in the past, and would therefore work hardship upon the landlord who had to compensate a tenant during a depression for an improvement affected during a boom, and vice versa. For this and other reasons mentioned above, it appears that this basis of valuing improvements is not well adapted to present needs.

The basis for valuing property in some eminent domain and condemnation proceedings, that is, the present market value of the property as determined by competent appraisers or witnesses, appears to be a more equitable basis for these types of valuations.

In the first place, the conditions out of which arise the need for valuing the property are similar to those out of which arise the need for valuing improvements effected by tenant-operators, that is, it is a "forced sale" -- a forced valuation. Also, the value arrived at by competent appraisers or witnesses would be based upon the increase in the value of the property owing to the improvement. This value may be stated briefly as the value of the improvement to an incoming tenant. Thus, there is only one question involved, and it is: How much has the improvement increased the value of the farm to an incoming tenant? If this basis of valuation were adopted, questions as to the cost of the improvement, its reproduction cost and the amount of depreciation as determined by a depreciation schedule or as determined by observation, would be largely eliminated from the discussion. Furthermore, no question would arise as to what value to assign to the improvement since the incoming operator does not intend to use the farm in the same manner as the outgoing tenant used it. The term "an incoming tenant" defines clearly that in these valuations such questions cannot enter, because the appraisers or valuers must assume that a tenant is to occupy the farm and use it as a similar farm would normally be used in that area.

The valuation of some of the unexhausted improvements may be difficult at first, but will become relatively easy when research in soil fertility has progressed to the place where the residual effect of different fertilizers and manures has been determined. The problem is complicated by the fact that the residual effect of fertilizers is influenced by the kind of crops grown, the type of soil, the amount of rainfall and other climatic factors, the type of fertilizer, and the kind of cover crop. The residual value of manure is influenced by these factors and also by the kind of feed used and the type of livestock to which it is fed. 4/ There exists some information on this subject, but much more needs to be determined before the fertility of the soil can be properly maintained, and before the residual value of fertilizers can be more exactly determined. 5/ Another similar case exists with reference to the rate of depreciation of buildings, fences, terraces, tile, and fruit trees. Valuation of unexhausted improvements will become relatively easy after a few years' experience, and may reasonably be expected to follow a technique similar to, although more refined than, that at present employed by real estate appraisers.

4/ For the compensation schedule of residual values of feeding stuff in England and Wales, see Appendix C.

5/ For the compensation schedule of residual values of fertilizers in England and Wales, see Appendix D.

The determination of the amount of compensation for deterioration should be based upon the same principle as the valuation of compensation for improvements. The tenant should be required to compensate the landlord for any deterioration, damage, dilapidation, or waste to the extent that the property is decreased in value.

The valuation of compensation for disturbance may be based upon the actual loss or expense directly attributable to the tenant's quitting the farm, or to the landlord's getting a new tenant established upon the farm. For the avoidance of disputes the statute may well state that if any loss or expenses can be proved, the amount of compensation shall be such a sum as to equal a specific proportion, perhaps twenty-five percent, of the annual rental for the last year of the tenancy. Owing to the differences in expenses incurred by each party at the termination of the lease, it may be provided that the payment to the tenant represents a larger sum than that to the landlord. If the disturbance provision is written in the contract between two individuals, the amount of compensation may be determined by a prearranged schedule as in the case cited, or by mutual agreement, or by arbitration.

Now that the principles underlying the valuation of compensation have been presented, it appears worthwhile to discuss more fully the method of applying these principles. A compensation statute for these three factors would probably cause a large number of minor disputes between the landlords and the tenants which would be undesirable for them to take to court. A system of compulsory arbitration probably could not be set up at present because of the constitutional right to a trial by jury, and because of the further constitutional right to test the constitutionality of a statute or to secure the court's construction of its meaning. Nevertheless, a system of arbitration could be provided by statute which the parties could use voluntarily. It could further be provided that if they agreed to arbitration at the time the lease was made this agreement would be irrevocable; and a system for the collection of the awards by the arbiters could be established by the statute.

Procedures of this type have been upheld by the courts in this country, although originally an arbitration agreement could be revoked up to the time that the arbitration had actually commenced. This old rule was based upon the legal theory that arbitration agreements were contrary to public policy because they ousted the court of jurisdiction. This rule may be changed, however, and an arbitration procedure can be set up which will take care of practically all disputes not involving the constitutionality or the construction of the statute.

Such a procedure should greatly facilitate the settlement of differences which may arise between landlords and tenants. This is especially true if the statute gave an appropriate State agency power to establish rules and regulations concerning the manner in which the arbitration board would proceed when called upon to arbitrate a difference with reference to compensation. Arbitration procedures would thus be standardized, and the boards would be in a much better position to rule equitably in all cases.

In order to facilitate the adjustment of compensation at the termination of the lease, the statute should contain the following provision: A detailed description of the condition of the property at the beginning of the lease should be made a part of the lease. The tenant should also be required to keep a record of all improvements made on the farm. Of course, the settlement with the outgoing tenant, which would include the record of improvements effected by him, would furnish an excellent record of the condition of the property, and could become a part of the new lease. In this manner there would exist a continuous record of the operation of the farm, and many of the difficulties in determining the amount of compensation likely to arise at the termination of the lease would be obviated. An additional provision would require that all notices and consents be made in writing, and be sent by mail. The statute may well require that when a mortgagee takes possession of the farm or when the title to the farm is transferred in any other manner, the mortgagee or the new owner shall assume the same obligations and privileges with reference to compensation as the original landlord. The property of both the landlord and the tenant should be distrainable for compensation.

Payment of Compensation

It has been previously suggested that the outgoing tenant should be compensated either by the landlord or by the incoming tenant. In case it is the duty of the incoming tenant to compensate the outgoing tenant, the landlord should assume the responsibility for seeing that this is done. This type of arrangement is probably applicable to most cases of unexhausted improvements. In many cases involving waste, however, compensation for deterioration should be made directly to the landlord, and compensation for disturbance should be made to the person who is "disturbed".

Regardless of how these phases of the payment are ultimately handled, the date or dates when the payment is to be made, and the amount due at each date should be determined in such a manner that the person making the payment will not be financially embarrassed. For example, if the compensation for the unexhausted

improvement involves a relatively large sum, the landlord or the incoming tenant should be permitted to reimburse the outgoing tenant by making annual payments over a period of years. In this manner the landlord or the incoming tenant could largely pay for the improvement out of the increased earnings from the farm due to the improvement.

How Compensation Would Work in Actual Operation

It is pertinent at this point to inquire into the manner in which compensation for improvements, deterioration, and disturbance would operate in actual practice if generally made a part of the leasing system in this country. This inquiry should be directed toward answering such questions as the following: Would compensation apply differently to different types of leases? Under what circumstances and conditions would it be likely to prove most helpful in making fundamental adjustments in the tenancy system? Where would it be likely to prove of but little value? In what ways would voluntary and compulsory compensation differ? Since the answers to these questions will differ for the various types of compensation, they will be considered in their respective order.

The manner in which compensation for improvements will apply to the different types of leases will depend largely upon two factors. These are (a) the division of receipts and expenses between the two parties and the balance of control over the organization and management of the farm as set up in the lease or as is customary in the community; and (b) upon the economic status of the tenant and factors closely related thereto. For convenience in the following discussion, leases may be classified as cash leases, share leases, and share-cash leases.

Even though there is wide variation in leasing conditions from one section of the country to another and from farm to farm within the same locality, the tenant under the cash lease usually stands the entire expense of many of the farm operations which result in more or less permanent improvements. Under the typical share lease, whether it be a livestock-share or a crop-share lease, the landlord and the tenant usually share the expenses of many of these minor operations in the same proportion as the produce of the farm is shared. The share-cash lease partakes of the share lease with reference to operations and improvements affecting major crops and of the cash lease in respect to the operations affecting the remainder of the farm. The cash tenant usually has more freedom than the share or the share-cash tenant in the organization and the management of the farm. He receives the entire immediate benefit from the increased production which may accrue from any improvements which he effects, while the share tenant must divide the increased

production with the landlord. From this immediate point of view the cash tenant with good judgment may make improvements which will yield a satisfactory return on the investment, and, therefore, he has more incentive than the share tenant in the making of improvements. From a long-time point of view, he is, under the present system, often more seriously restricted as to the improvements which he can make than is the share tenant. This situation is due to the fact that the landlord can increase his rent owing to the improvement. For example, if the cash tenant puts on limestone and fertilizer and feeds livestock returning the manure to the soil, he receives the entire increase in production. His landlord may, however, increase the rent. In fact, judging from the experience of cash tenants who have made worthwhile improvements, he is almost sure to increase it, because another tenant will be able to pay a higher rent owing to the increased fertility of the soil. The share tenant usually divides the expenses and the receipts with the landlord and therefore is not likely to lose his farm because of improvements of the type mentioned above; neither is it likely that the shares received by the two parties will be changed owing to improvements effected by the tenant.

It appears that the need for adjustment with reference to unexhausted improvements under the cash system of renting farm land is greater than the need under the share system, and that the need for adjustment of the share-cash system is somewhere in between, depending upon the proportion that the share and the cash rent is of the total rent paid. Thus, under the present method of dividing receipts and expenses, it could be expected that cash tenants would do more things to increase the value of their farms than would share tenants if assured just compensation for the unexhausted value of the improvements, and that share-cash tenants would do less than cash tenants but more than share tenants.

The extent to which compensation for unexhausted improvements will cause tenant farmers to conserve and to improve the land, barns, and fences depends upon their economic status and factors closely related thereto as much as, if not more, than upon the type of lease which is used. For example, the cash tenant or even the share tenant in the Middle West who has a relatively high economic status, and who has considerable capital invested in workstock, machinery, and equipment, and possibly a large dairy or beef cattle herd, and who, in addition, plans the organization of the production enterprises and almost entirely manages the whole farm business, will effect many more improvements than the share-cropping tenant in the Southern States who has a much lower economic status, and who has little or no capital invested in the farm business. In fact, compensation for

improvements probably would prove of little value to that category of Southern tenant farmers who are popularly spoken of as "sharecroppers" largely because of their low economic status -- that is, their inability to supply the cash necessary in making improvements. Of less importance are such factors as annual shifting from farm to farm, the uncertainty of occupancy for more than one year, the unfamiliarity with management problems owing to the close supervision under which they work, and the exploitative type of farming with which they are most familiar.

There are many things, however, which can be done to conserve and improve the farm without an expenditure of a large quantity of capital. Labor (including the use of workstock and equipment) is the chief item of expense in clearing a field of stones, in keeping the fields free of noxious weeds and shrubs, in reclaiming waste land, in terracing and in the making of other erosion control devices, in drainage operations through open ditches, and in properly caring for and spreading the manure produced on the farm. Therefore, in relation to improvements similar to these, the availability of cash is not important in determining whether the tenant will effect the improvement. His economic status and closely related factors are relatively important, however, in determining whether the improvement will be made, owing to the close relation of the economic position of the individual tenant and his attitude toward farm property.

It should be understood that the influence of the economic status of these two types of tenants is used only by way of illustration. There are some "sharecroppers" who would effectively utilize the privilege of making improvements, and there are likewise some cash tenants who would change their system of farming but little, or who would even take advantage of the additional freedom thus accorded them, unless adequate safeguards were provided. Thus, it would be misleading to set up definite classes of tenants to which compensation provisions are adaptable and other classes to which they are not.

The above discussion applies in a general sense to improvements which the tenant farmer would make to the farm home, garden, and orchard in a manner very similar to which they apply to improvements such as land, barns, and fences. There are a few exceptions which should be noted, however.

The crop-share tenant usually is more handicapped in the development of gardens and orchards than is the cash tenant or the livestock-share tenant. As has been previously pointed out, the landlord who rents on the crop-share basis does not wish valuable crop land to be taken over for a garden or for an orchard.

From an immediate point of view, his reasoning is perfectly logical. In the first place, he would receive a share of the crops from a smaller part of the farm. In the second place, from the standpoint of the landlord, the tenant may often spend time cultivating the home garden or caring for the orchard, whereas if he were working in the field crops from which the landlord receives a share, the landlord's income from the farm would be larger. Thus, the type of leasing arrangement is a more important influence from this point of view in preventing improvements to the home garden and orchard than with reference to improvements to the farm. It appears that the economic status of the tenant and those closely related factors which were discussed above would operate about the same in influencing the making of improvements to the home garden and orchard as they would in making improvements to the farm.

The effects of a system of compulsory compensation for improvements based upon legislative action will depend largely upon the provisions of the statute and the manner in which it is administered. Assuming that the statute will be complete and equitable, and that it will be economically and justly administered, it can be expected that many tenants will avail themselves of the opportunity to conserve and to improve the farms they operate by making significant alterations and repairs to the buildings, and by preserving the soil resources. In addition, they will establish more and better temporary pastures and meadows. They can be expected to use more limestone and commercial fertilizers and to take better care of the farm manure and spread it on the fields. Furthermore, many tenants will establish good home orchards and gardens, and will make their dwellings more sanitary and comfortable. Over and above the making of improvements of this kind, many tenant-operators will feel that they have a new relationship to the farm -- they will feel somewhat like an owner. This change will cause them to do many of the little, yet important, things around the farm in a better way. This will be effective in both conserving and improving the agricultural resources, and in increasing the income to both the landlord and the tenant.

If compensation for unexhausted improvements is not brought within the scope of the problems controlled by legislative action and thereby made compulsory, this important method of improving the farm tenancy system will probably be utilized by only a few landlords and tenants. There are some landlords, however, who will voluntarily continue to write such provisions into their leases, but the number may be expected to increase very slowly and gradually. This process can be accelerated by an active educational program similar to those carried on by the extension service, farm journals, and other agencies for improving various phases

of our agriculture. The influence of voluntary compensation will generally be restricted to a small liberalization of the contractual agreement with reference to a selected group of improvements. Some of the more far-sighted landlords will continue to assure their tenants compensation for those improvements which they believe will increase the income from the farm. Again, under voluntary action it seems that compensation may be used where it is needed least, and may not be used at all where the leasing arrangements are such that those adjustments are most pressing. Thus, it can be expected that under voluntary compensation, unassisted by an active educational program, very little progress will be made. Even if an active educational program is put into operation and compensation becomes widely used, it is probable that the improvements which are included will be quite restricted and that the landlords, tenants, and farms needing this basic adjustment most will utilize and receive it least. If compensation is not brought within the scope of statutory direction, it will largely be a process of the best leasing arrangements being made still better and the poorest leases being changed very little, if at all.

Compensation for deterioration with respect to the various factors discussed in the preceding paragraphs would be effective or ineffective in much the same manner as compensation for improvements. Many tenant-operated farms deteriorate year after year even though there is the common law doctrine against deterioration, in spite of the fact that many leases contain definite and stringent provisions designed to prevent waste, and without regard to State statutes which make damage and injury unlawful. Voluntary action has generally failed to prevent deterioration, and the present ill-devised statutory control also has been largely ineffective. More stringent laws governing deterioration and waste may be passed, but it is probable that they would prove as ineffective as the present laws. Probably one of the main reasons deterioration statutes have not proved successful is the absence of a reciprocal provision respecting improvements. A well-written and well administered statute providing for compensation, both for improvements and for deterioration, especially if the amount of the compensation payable for the improvement is offset wholly or in part by any deterioration which occurred, would without doubt work better than a statute providing for compensation for just one of these actions. Past experience indicates that compensation for deterioration and waste, except in very flagrant cases, will be ineffective without compensation for improvements. Therefore, it appears that the effectiveness of either of these types of control depends, to a very large extent, upon its working hand in hand with the other measure.

Compensation for disturbance is less common than the other

two types of compensation, and therefore there is less experience upon which to base a judgment. Also, the type of adjustments which such provisions would make, whether they be voluntary or compulsory, would depart more widely from present relations than those brought about by the other types of compensation. This does not mean, however, that compensation for disturbance is not essential, and that it would not fit in admirably with the better type of leasing arrangement. In fact, it appears that instability and insecurity, the two conditions which compensation for disturbance would tend to alleviate, are two of the most widespread and most obvious evils of the present tenancy system. Furthermore, even though there is little experience and little precedent in this particular regard, there is considerable economic and legal logic to substantiate such an action. But how would such an adjustment operate within the present framework of the tenancy system?

There does not appear to be any essential difference in the way compensation for disturbance would affect the relations of landlords and tenants who use the several types of leases. Neither does it appear to be more adaptable to one class of tenants than to another. There is a marked difference, however, between the way voluntary and compulsory compensation would operate. To state the case briefly, there will be practically no leases providing for compensation for disturbance if left to the voluntary action of private individuals. Under such circumstances, therefore, compensation would be largely inoperative and would be certainly ineffective. If a system of compulsory compensation for disturbance were to be provided by statute, there are two important questions which should be considered. First, what will constitute disturbance and what should be the amount of the compensation? Second, how will it be determined that each individual case does or does not come within the definition of what constitutes disturbance?

An outline of what constitutes disturbance, and of those situations under which the landlord and tenant may terminate or refuse to renew the lease without causing disturbance, was presented in a previous section. The amount of the compensation should be such a sum as fairly represents the actual damage or inconvenience experienced. 6/ The determination of whether a particular case is within the scope of the compensation provision and the appraisal of the amount of damage or inconvenience suffered would no doubt involve considerable disagreement between the landlord and tenant, and would possibly work some injustices until

6/ It should be noted that the minimum compensation for disturbance as provided by statute in England and Wales and in Scotland is equal to one year's rent, and that the maximum is two year's rent.

a fairly large number of cases had been determined and a definite method of procedure and concise rules and regulations had been developed.

It is probable that the statute should contain a clause that in case of disagreement a board of arbitration selected by the two parties should determine whether the statute provides for compensation under the particular circumstances, and should appraise the amount of the damage or inconvenience. The first question they would have to decide is whether compensation for disturbance should be forthcoming. Then they would have to decide how much loss or damage was experienced. At first, the procedure followed by arbitration boards in such an evaluation would probably be diverse. It should not be long, however, until procedure would become standardized. Arbitration boards could then perform their duties in a way similar to the groups of appraisers, used at present to appraise the value of farms for the purpose of making loans, or in the dissolution of livestock share leases where an appraisal is necessary to determine the shares to be received by each party.

For the first few years, under a State statute providing compulsory compensation for disturbance, there would probably be numerous cases where the lease was unduly terminated, or where the landlord unreasonably refused to renew it, for which compensation would not be claimed. Even with this situation there would probably be a flood of cases in which arbitration would be necessary. In most sections of the country the farmers themselves probably have had enough experience in arbitration procedures and have sufficient education to handle the situation definitely and equitably. The court to which such cases might be appealed would probably be overrun for a few years. However, within a relatively short time shifting from farm to farm should be greatly decreased, and the unreasonable termination of leases considerably reduced. In fact, in localities where present leases are properly and reasonably terminated, there would be no occasion for compensation for disturbance, and only in situations where the present condition is unfair would these cases arise.

Chapter V

LEGAL ASPECTS OF COMPENSATION 1/

The agricultural landlords and tenants have generally been permitted by law to make any type of agreement convenient to them. This is particularly true of the financial arrangements which they make with reference to the leasing of the farm. Consequently, when the two parties agree voluntarily, they are at present free to make any type of agreement which they may desire concerning payments which the landlord may make to the tenant for improvements made during the term of the tenancy and for disturbance in case he is requested to move, and which the tenant may make to the landlord for any deterioration which may occur and for disturbance in case he vacates the property. In most instances, legal problems connected with such agreements would be simple questions concerning the construction of the contract, and the duty of the court would be to determine the intent of the parties when entering into the agreement. It is true that to be enforceable contracts must be in accord with the public policy of the State, but this requirement is not one likely to be overstepped in contracts of this nature. Thus the two parties can incorporate in their leasing agreements compensation provisions similar to those discussed in preceding sections and be within their constitutional and legal rights.

Legislation providing for compensation should affect only those leases which are made after its passage, owing to the policy of the State not to interfere with the legal obligations imposed by existing contracts. 2/ Furthermore, the compensation legislation should be so drafted as to become an implied part of all agricultural leases. This is often done in the case of contracts subject to public regulations -- for example, insurance policies.

Even if it were determined to be economically and socially desirable, it would be impracticable in this country, in the light of constitutional limitations, for the Federal government to

1/ Albert H. Cotton, Land Policy Division, Office of the Solicitor, Department of Agriculture, has rendered invaluable assistance in the final preparation of this chapter. The writer wishes to acknowledge and to express his sincere appreciation for this assistance. He is also indebted to John O. Stigall of the Land Use Planning Section for helpful suggestions and criticisms.

2/ The Federal Constitution, Article I, Section 10, Clause 1, provides, "No state shall . . . pass any . . . law impairing the obligation of contracts . . ."

adopt legislation requiring compensation either for improvements, for deterioration, or for disturbance. Under the Constitution of the United States, the Federal government has no power to regulate landlord and tenant relations within the several States. This power is not conferred upon the Federal government in the Federal Constitution, and it is hence one of the powers considered as reserved to the States under the Tenth Amendment.

A State legislature, however, has power to pass any legislation not prohibited by a provision of either the State or Federal Constitution. Thus, legislation regulating landlord and tenant relationships can be enacted by State legislatures, subject to these limitations. The several lines of adjustment of landlord and tenant relations which have been suggested must now be considered in the light of constitutional requirements. Before this is done it may be worthwhile to consider some of the basic principles underlying the power of the State to regulate these relations. It is based upon the special concern of the State with the land and agriculture, and upon the police power.

Originally, at common law, agriculture occupied a unique and peculiar status. Land and agriculture were not considered in the same light as a business or trade. Consequently, a "lease" was in law not merely a "contract", but a conveyance of an estate in land by the owner to another. The definition given by Blackstone in his Commentaries (2 Comm. 317) expresses very well the primary meaning of the term. He says, "a lease is properly a conveyance of any lands or tenements (usually in consideration of rent or other annual recompense) made for life, for years, or at will, but always for a less term than the lessor hath in the premises." 3/

There has grown up, however, a second meaning of the word "lease" which is somewhat more extended. In addition to the conveyance referred to above, the term is very often used to include the various contractual obligations which are created in connection with such a conveyance; these are usually known as the "covenants of the lease". As a result of this strong contractual feature, the courts have sometimes lost sight of the fundamental fact that a lease is a conveyance of an estate in land, and have judicially declared that a lease is a contract. Such a statement as, "a lease is a contract for the possession of lands and tenements on one side and a recompense of rent or other compensation on the

3/ At the present time there is a bill before the Legislature of Pennsylvania which includes among its provisions one giving a tenant the right to mortgage his leasehold. Such a provision flows naturally from the conception of a lease as an estate in land, and is in organic accord with existing land law.

other", Jackson v. Harsen 7 Cow. (N. Y.) 323, 17 Am. Dec. 517, states clearly a civil law, rather than a common law, conception of the relation, and is only concerned with the faithful performance of a contract between individuals.

The common law directs its attention to the land, demanding that the rights and duties which run with the land shall belong to a designated individual who may be required to exercise them. It also holds that the State has a permanent interest in the land and may adjust the manner in which the individual holds the land in the interest of the State. For these reasons a careful distinction between "contract" and "conveyance" is maintained in many recent American decisions. The Indiana case of N. Y. C. and St. L. Rr. Co. v. Randell, 102 Ind. 453; 26 N. E. 122, is a typical example where the lease was clearly recognized as a "conveyance". The court affirmed, "It may be said, in general terms, that where the conveyance of an estate in lands, subordinate to that of the grantor, to a grantee, upon a valid consideration and for a definite term is made, the instrument making the conveyance is a lease." In the New York case cited in the preceding sentence the lease was considered definitely as a "contract" while in Averill v. Taylor, 8 N. Y. (4 Seld) 44, a New York Court held that "Under the common law, aided by occasional statutes, estates for years gradually became valuable, were recognized and protected. They take their place under our statutes as estates in land. They are not spoken of as terms or as interest in terms, but ranked as estates in land and called chattels real." Thus, the court clearly recognizes that the lease is a conveyance. In many instances, the distinction is not clearly drawn, and on occasion, as in New York, the decisions exhibit a clear-cut conflict within the one jurisdiction. 4/

Even though the State has a peculiar interest in agriculture and the power to regulate the manner in which land is held, agriculture has been an industry over which the States have exercised only a few types of control, being content in general to pass such legislation as would encourage production and to interfere only where production conditions are threatened. Consequently, that phase of compensation legislation would be, without doubt, within the scope of proper State legislation, while those improving farm living conditions and increasing the tenant farmer's participation in the activity of the community do not have so much legislative precedent. Unless it can be shown that such matters are affected with a public interest, only such direction and adjustment as the tenant can force the landlord to accept as a part of the lease will be permitted under the doctrine of liberty of contract, the

4/ For a more extended presentation of the principles involved, see the discussion under "Disturbance".

due process clause, and the police power.

The concept of "freedom of contract" has been used to hold unconstitutional various legislative enactments limiting the power of individuals to enter into whatever contractual relations they desire. Notable examples of this are the minimum wage laws. The court said in a leading minimum wage decision, Adkins v. Childrens Hospital, 261 U. S. 525 (1923), page 545:

"The right to make contracts about one's affairs is a part of the liberty protected by the due process clause . . . freedom of contract is the general rule and restraint the exception." 5/

5/ The decision in the case of the West Coast Hotel Co. V. Parrish, delivered March 29, 1937, subsequent to the preparation of this chapter, specifically reversed the ruling in the Adkins case. The reopening of the question of the constitutionality of minimum wage legislation and the over-ruling of the earlier decision adds strength to the view that the State has the power to regulate contractual relations under specific circumstances.

The language employed by Chief Justice Hughes, who delivered the decision, is most pertinent to the philosophy upon which the theory of compensation rests and contains a discussion of the doctrine of "freedom of contract" which will in all probability be of great importance in consideration of the constitutionality of legislation in the future. A few of the pertinent excerpts are as follows:

"In each case the violation alleged by those attacking minimum wage regulation for women is deprivation of freedom of contract.

"What is this freedom? The Constitution does not speak of freedom of contract. It speaks of liberty and prohibits the deprivation of liberty without due process of law. In prohibiting that deprivation the Constitution does not recognize an absolute and uncontrollable liberty. Liberty in each of its phases has its history and connotation. But the liberty safeguarded is liberty in a social organization which requires the protection of law against the evils which menace the health, safety, morals, and welfare of the people. Liberty under the Constitution is thus necessarily subject to the restraints of due process, and regulation which is reasonable in relation to its subject and is adopted in the interests of the community is due process."

In many instances, however, the States have interfered in the public interest with the landowner's liberty of contract and the freedom which he may exercise in managing his own property. Outstanding among these are the following: (1) The removal of agricultural fixtures and certain minor improvements effected by the tenant occupier; (2) prohibition of agricultural leases for less than one crop year, except under specific circumstances; (3) prohibition of agricultural leases for more than a specified number of years; (4) termination of a long-term lease upon the payment of a specified sum before the end of the lease; (5) regulation of the amount of rent to be paid by the tenant under specific conditions; (6) control of use of agricultural resources through regulation of grazing on public lands, requiring the destruction of cedar trees to prevent the spread of rust to fruit trees and destruction of crops to prevent the spread of corn borers; (7) regulation of the use of water, oil, and gas to conserve these resources; (8) regulation of the use of private property in the interest of public health, safety, morals, and the general welfare, even to the extent of enacting a general zoning ordinance; and (9) use of the power of eminent domain and the taxing power to facilitate the establishment of irrigation and drainage districts. The specific cases in which these restrictions of the landowner's freedom of control over his property were upheld by the courts will be set forth when each particular situation is discussed in subsequent sections.

Other conditions under which "liberty of contract" may be restricted in the interest of the general welfare are summed up in the dissenting opinion of Chief Justice Hughes in Morehead v. People ex rel. Tipaldo, decided June 1, 1936, as follows:

"We have had frequent occasion to consider the limitations of liberty of contract. While it is highly important to preserve that liberty from arbitrary and capricious interference, it is also necessary to prevent its abuse, as otherwise it could be used to override all public interests and thus in the end destroy the very freedom of opportunity which it is designed to safeguard.

"We have repeatedly said that liberty of contract is a qualified and not an absolute right. 'There is no absolute freedom to do as one wills or to contract as one chooses. . . Liberty implies the absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interests of the community.' Chicago, Burlington & Quincy R. R. Co. v. McGuire, 219 U. S. 549, 567. The numerous

restraints that have been sustained have often been recited. ID., p. 568. Nebbia v. New York, 2910, 5, 502, pp. 526-528. Thus we have upheld the limitation of hours of employment in mines and smelters (Holden v. Hardy, 169 U. S. 366); the requiring of redemption in cash of store orders or other evidences of indebtedness issued in payment of wages (Knoxville Iron Co. v. Harbison, 183 U. S. 13); the prohibition of contracts for options to sell or buy grain or other commodities at a future time (Booth v. Illinois, 184 U. S. 425); the forbidding of advance payments to seamen (Patterson v. Bark Eudora, 190 U. S. 169); the prohibition of contracts to pay miners employed at quantity rates upon the basis of screened coal instead of the weight of the coal as originally produced in the mine (McLean v. Arkansas, 211 U. S. 539); the regulation of the size and weight of loaves of bread (Schmidinger v. Chicago, 226 U. S. 578; Peterson Baking Co. v. Bryan, 290 U. S. 570); the regulation of insurance rates (German Alliance Insurance Co. v. Lewis, 233 U. S. 389; O'Gorman & Young v. Hartford Insurance Co. 282 U. S. 251); the regulation of the size and character of packages in which goods are sold (Armour & Co. v. North Dakota, 240 U. S. 510); the limitation of hours of employment in manufacturing establishments with a specified allowance of overtime payment (Bunting v. Oregon, 243 U. S. 426); the regulation of sales of stocks and bonds to prevent fraud (Hall v. Geiger-Jones Co., 242 U. S. 539); the regulation of the price of milk (Nebbia, v. New York, supra.) The test of validity is not artificial. It is whether the limitation upon the freedom of contract is arbitrary and capricious or one reasonably required in order appropriately to serve the public interest in the light of the particular conditions to which the power is addressed."

The rather complete regulation of insurance contracts is an example of the degree to which liberty of contract can be restricted in the public interest. The Supreme Court has upheld acts regulating the terms of insurance contracts and also their rates. In the case of German Alliance Insurance Co. v. Lewis. 233 U. S. 389 (1914), upholding a statute providing for the regulation of rates for fire insurance, Mr. Justice McKenna said:

"Against that conservatism of the mind which puts to question every new act of regulating legislation, and regards the legislation invalid or dangerous until

it has become familiar, government - state and national - has pressed on in the general welfare; and our reports are full of cases where in instance after instance the exercise of regulation was resisted and yet sustained against attacks asserted to be justified by the Constitution of the United States. The dread of the moment having passed, no one is now heard to say that rights were restrained or their constitutional guaranties impaired. . .

"The cases need no explanatory or fortifying comment. They demonstrate that a business, by circumstances and its nature, may rise from private to be of public concern, and be subject, in consequence, to governmental regulation. And they demonstrate, to apply the language of Judge Andrews in the Budd Case (117 N. Y. 27, 5 L. R. A. 559, 15 Am. St. Rep. 460, 22 N. E. 670), that the attempts made to place the right of public regulation in the cases in which it has been exerted, and of which we have given examples, upon the ground of special privilege conferred by the public on those affected, cannot be supported. 'The underlying principle is that business of certain kinds hold such a peculiar relation to the public interest that there is superinduced upon it the right of public regulation.' Is the business of insurance within the principle? It would be a bold thing to say that the principle is fixed, inelastic, in the precedents of the past, and cannot be applied though modern economic conditions may make necessary or beneficial its application. In other words, to say that government possessed at one time a greater power to recognize the public interest in a business and its regulation to promote the general welfare than government possesses today."

Texas attempted to regulate agricultural contracts by a statute specifying the rental ratio for farms. This statute (Texas Acts 1915, p. 77) was held unconstitutional in Culberson v. Ashford, 118 Tex. 491; 18 S. W. (2nd) 585 (1929), and the decision was based upon the 14th Amendment to the Federal Constitution. The same results were later attained, however, by an Act (Texas Acts 1931, 42nd Legis., p. 171. Vernon Tex. Stats. 1936, Art. 5222) which provides that only landlords who do not exceed the rental specified in the prior act shall have a landlord's lien for collection of their rent. Prior decisions in the case of Dunbar v. Texas Irrigation Co., 195 S. W. 614 (Tex. Civ. App. 1917) and Hawthorne v. Coates Bros., 202 S. W. 804 (Tex. Civ.

App. 1918), had indicated that the legislature could classify landlord's contracts and restrict the landlord's lien to such contracts as it deemed best in the public interest. The case of Hawthorne v. Coates Bros. supra, is especially in point with regard to the constitutionality of the present Texas rent legislation, because it held that provisions in the 1915 Act similar to those in the 1931 Act, which limit the lien, were separable from the provisions absolutely limiting the rental and were constitutional. It would seem, therefore, that the State may restrict the liberty of contract to the extent of regulating rents indirectly by rewarding landlords, who observe the regulation, with a superior method for collecting their rent, without violating the Constitution, even though the direct fixing of the rental for agricultural lands has been held unconstitutional in the State.

Since the validity of a comprehensive program of compensation regulation must depend upon the validity of its various parts, it will be best to examine the three categories separately.

Compensation for Improvements

Legal problems relating directly to the tenant's position with reference to improvements and fixtures are chiefly concerned with (a) the tenant's right to remove improvements and fixtures effected by him; (b) the requirement that the landlord maintain the property in a proper state of repair; and (c) the position of the tenant regarding improvements effected by him which are not physically and economically removable. These problems will be discussed in their respective order.

Removal of Improvements and Fixtures. At common law when an agricultural tenant effects needed fixtures of improvements affixed to the soil, they become the property of the landlord at the termination of the lease. Businessmen, including nurserymen and gardeners, however, are permitted at common law to remove comparable fixtures needed in the course of their business. The reason for this discrimination against the agricultural tenant is historical, having been handed down to us from an early English decision, and is best explained by the following quotation from a recent Nebraska case, Frost v. Schinkel, 121 Nebr. 784, 238 N. W. 659 (1931) wherein the court said:

"The leading case on fixtures is Elwes v. Maw, 3 East (Eng.) 38 (1802) . . . in this decision, Lord Ellenborough discussed all the leading cases up to that time including those from the year books. He cited the case of Penton v. Roberts, 2 East (Eng.) 88. in which Lord Kenyon in 1801 held that gardeners and

nurserymen might plant trees and shrubs in the course of their trade in the neighborhood of the metropolis of London and that they might remove all of these things as trade fixtures before the termination of their lease.

"Lord Ellenborough then made the distinction between trade and agriculture and admitted that to encourage trade and business, it might be proper to be liberal in allowing the tenants to remove trade fixtures, yet he held the tenant farmer strictly responsible for the value of all improvements he has erected and removed from the fee."

As a result of this historical background, the Nebraska court in this case adopted the following definition of trade fixtures which the tenant may remove:

"Trade fixtures are articles affixed to the realty by tenants for the purpose of carrying on trade or business not exclusively agriculture."

In other jurisdictions a classification of agricultural fixtures which are removable is recognized. In the case of In Re Shelar, 21 F. (2d) 136 (W. D. Pa. 1927) in permitting the removal of a silo by the tenant, the court said:

"Between the landlord and the tenant there are three well-recognized exceptions to the general rule relative to the removal of fixtures:

"(a) trade fixtures, articles necessary to the carrying out of the trade;

"(b) agricultural fixtures, annexed for the purpose of the tilling of the soil;

"(c) domestic fixtures, attached to a dwelling house for the purpose of convenience or comfort.

"These may be removed by the tenant. Seeger v. Pettit, 77 Pa., 437, 18 Am. Rep. 452."

This modification of the common law rule and conflict of authority is spread throughout the several States.

Almost from the time the doctrine was announced stating that agricultural fixtures could not be removed, American courts have

rebelled against it, although some have felt constrained to follow it, either as a part of the common law, or because of statutory adoption of the common law rule. The United States Supreme Court, in Van Ness v. Pacard, 2 Pet. 137 (1828) in an opinion by Mr. Justice Story, condemned the distinction between agricultural tenants and other tenants, and permitted a dairyman in the District of Columbia to remove his fixtures. New York also refuses to follow the common law rule. In Holmes v. Tremper, 20 Johns. 29 (N. Y. 1822), the court permitted the removal of a cider mill from a farm by a tenant, and said:

"It is admitted, in this case, that the tenant erected the cider mill and press, at her own cost during her tenancy, for the purpose of making cider on the farm. I confess, I could never perceive the reason, justice or equity of the old cases, which gave the landlord such kind of erections as were merely for the use and convenience of the tenant and the removal of which neither defrauds nor does the least injury to the landlord. The rule anciently was very rigid, but I think has yielded materially to the more just and liberal notions of modern times."

A South Dakota statute (S. D. Code sec. 497), substantially similar to the provisions of corresponding statutes in Oklahoma (Okla. Code sec. 8555), Montana (Mont. Code secs. 6819, and 6825), and North Dakota (N. D. Code sec. 5472), provides as follows:

"When a person affixes his property to the land of another without an agreement permitting him to remove it, the thing affixed belongs to the owner of the land, unless he chooses to require the former to remove it; provided, that a tenant may remove from the demised premises at any time during the continuance of his term anything affixed thereto for purposes of trade, manufacture, ornament or domestic use, if the removal can be effected without injury to the premises, unless the thing has, by the manner in which it is affixed, become an integral part of the premises."

The South Dakota court alone has construed this statute to apply to agricultural fixtures, such as fences, and permits their removal. In Jcslin v. Linder, 26 S. D. 420, 128 N. W. 500 (1910), the court said that the statute operated in the same manner as if such a clause had been incorporated in the lease made by the parties; consequently, it held that it was binding as to the parties to the lease, but not as to third parties unless the lease had been recorded.

While the South Dakota court is apparently willing to construe the section as if the word "agricultural" appeared among the excepted purposes, Oklahoma, Montana, and North Dakota are not. In the recent case of Warner v. Intlehouse, 60 N. D. 542, 235 N. W. 638 (1931), the court said that under the North Dakota provision, fences generally were not removable by tenants. In the earlier North Dakota case of Klocke v. Troske, 57 N. D. 404, 222 N. W. 262 (1928), the court denied that a tenant had a right to remove a Delco electric light plant from the farm and a hay carrier system from the barn, while permitting the removal of water tanks which were not attached to the ground. These decisions were rendered in spite of the fact that North Dakota is one of the States which has modified the common law rule by legislative action with regard to removing certain agricultural fixtures. (North Dakota Laws 1929, Chap. 129, grants to tenants the right to remove any grain bin, granary, or other structure placed upon such farm for the purpose of storing grain.) These improvements furnish excellent examples of the type which tenants everywhere should be encouraged to install by being given the right to remove.

The English in 1851 abandoned the common law rule which was laid down by Lord Ellenborough in Elwes v. Maw, supra, as a result of about 50 years' experience with the difficulties which the rule created in the conditions of agricultural tenancies. These early difficulties were strikingly similar to those of the United States today, and the reversal of the original rule has been instrumental in adjusting landlord and tenant relations to protect the interests of both parties. If in some instances the American doctrine of liberty of contract restricts the scope of a compensation statute similar to the English act, protection of the interests of the tenant may be partially achieved through statutory enactments recognizing the right of the tenant to remove agricultural fixtures and improvements. If the tenant is protected by a right of removal, and the landlord desires that the improvements and fixtures remain on the farm, the parties could reach an agreement as to the amount to be paid. At present the tenant risks losing improvements through the termination of his lease without compensation unless the doctrine of agricultural fixtures is recognized. The above remedy, of course, is inapplicable to fixtures physically impossible to move, or to those movable only at great expense or those not adapted to other farms.

The easiest step in the adjustment of the tenant's position regarding improvements is the statutory extension by the States of the doctrine that agricultural fixtures are removable. This is apparent because: (1) there is little doubt as to the constitutionality of such a statute, if properly drawn; (2) this situation already obtains, wholly or in part, in a number of

States as common law doctrine or by statute; (3) for over a century American courts have questioned the wisdom of the old rule, even when they felt constrained to follow it; (4) to adopt such a rule would accord the farmer the same rights granted earlier to businessmen, nurserymen, and gardeners; (5) the adoption of the rule furnishes a degree of protection to farmers in their investment in a large number of desirable improvements and encourages the practice of making such improvements; and (6) since no cash outlay on the part of the landlord is required, there is little chance of vigorous opposition by them to such a change in the leasing system.

Maintenance of Rented Property. The general rule with regard to repairs is stated in Thompson, Real Property, Vol. 2, Sec. 1572:

"The lessee is not bound to make substantial, lasting or general repairs, but only such ordinary repairs as are necessary to prevent waste and decay of the premises. 'This obligation arises from the mere relation of landlord and tenant. It is not a covenant to repair generally, but so to use the property as to avoid the necessity for repairs as far as possible.' U. S. v. Bostwick, 94 U. S. 53."

The laxity of the rule explains in part the gradual deterioration of most property rented by tenants. To safeguard the general welfare properly, it is necessary to maintain agricultural properties, an end which is better served by the rule of the Civil Law. There the primary obligation rests on the landlord, permanently interested in the premises, with the provision that the occupying tenant may make and secure compensation for repairs if the landlord fails to act.

It is interesting to note that the Georgia Civil Code (Ga. Code 1933, Sec. 61-111) has adopted this rule of the Roman Civil Law in place of the common law rule that the tenant is liable for repairs. This rule, in Georgia, makes it possible for the tenant to require compensation where the improvements he makes come under the head of repairs. For example, in the case of Dougherty v. Taylor & Norton, 5 Ga. App. 773, 63 S. E. 928 (1909) the court said, quoting from Lewis v. Chisholm, 68 Ga., 40:

"The remedy of the tenant is, after reasonable opportunity to the landlord and failure by him to repair, to make the repairs himself, and to look to the landlord for reimbursement, or to occupy the premises without repair and hold the landlord responsible for damages by action or by recoupment to an action for the rent.

"Even if the new window, when put in, was some improvement on the old one that was broken, this fact would not destroy its character as a repair."

The adoption of the civil law rule regarding repairs might tend to make landlords maintain their property in better condition. Such a statute, however, would be of questionable value with reference to agricultural properties, particularly since the landlord and the tenant may provide by contract that the duty to repair should be on the tenant.

Improvements not Reasonably Removable. In addition to these two types of adjustment, it appears necessary, before any adjustment can be effected with reference to improvements and fixtures physically and economically impossible for the tenant to remove, that the States limit under the police power certain property rights of the landowner. Many changes have in the past been made in the property rights of the landowner where the public interest is involved. For example, Kansas has a statutory provision requiring compensation from the landlord or the incoming tenant for improvements effected by the outgoing tenant. By Kansas Laws, 1925, Ch. 208, p. 276, (Kans. Rev. Stat. Suppl. secs. 67-501 and 67-501A) landlords renting more than 5,000 acres who compel their tenants to furnish substantially all the buildings and improvements on a farm must pay them the fair value at the termination of the lease, or allow the outgoing tenant to make a sale at a fair value to an incoming tenant. In Berg v. Scully, 120 Kans. 637, 245 Pac. 119 (1926), holding that the general requirement that the tenant furnish improvements, coupled with a custom for compensating those who did so, created an implied contract for compensation, the Kansas Supreme Court noted the new statute with approval, and said that it declared the public policy of the State. Although covering only a limited number of cases, in principle it could well be extended to cover all landlords and all types of improvements.

The courts also have gone very far in restricting the property rights of landowners by upholding rural improvement projects, such as drainage systems, which required that the landowner reimburse the district for the benefits received. Drainage district cases are not precisely in point because of the fact that the exercise either of the power of eminent domain or of the taxing power is involved rather than the exercise of the police power, but they show State power to take action restricting the property rights of individual landowners.

Another precedent for the establishment of laws interfering with the property rights of individuals is found in urban housing laws. Such legislation has been almost entirely directed toward

improving health conditions in urban centers, and has been uniformly upheld despite hardships on the landlord, if real relation between the requirements of the legislation and the public interest were shown. Thus, in the case of Tenement House Department v. Mceschen, 179 N. Y. 325, 72 N. E. 231 (1904), in upholding that section of the New York Tenement House Law which required the installation of water closets in buildings erected prior to the time that their installation had been required by the building regulations, the court said:

"It is not the hardship of the individual case that determines the question, but rather the general scope and effect of the legislation as an exercise of the police power in protecting health and promoting the welfare of the community at large."

In this case it was contended that the cost of the improvement would amount to very nearly as much as the owner's equity in the property, and that there was a consequent unconstitutional deprivation of a property interest, but this contention was not upheld.

In addition, there are many cases indicating that the States may take action to preserve the natural resources, thereby increasing and conserving potential food supply and the supply of other consumable goods. Large sums have been spent in various land settlement schemes, in irrigation projects, and in the prevention of plant and animal diseases. With this objective in view, preservation of the fertility of the soil has also been an objective favored by State action. Improvements necessarily remaining on the land, improvements affecting the soil itself by increasing its fertility, or those improving the soil as the result of such permanent changes as drainage and irrigation ditches, or other works to prevent soil erosion, generally tend to conserve the natural resources of the State, and, consequently, are improvements in which the State is vitally concerned. It seems clear that statutes encouraging soil improvement and conservation through the requirement of compensation to an outgoing tenant for the unexhausted value of soil improvements would be directly affected with a public interest, and hence should be deemed constitutional.

When such a public interest is involved, it appears constitutional to interfere with property rights. The Supreme Court of the United States said in Nebbia v. New York, 291 U. S. 502:

"The Constitution does not guarantee the unrestricted privilege to engage in business or conduct it as one pleases. Certain kinds of business may be prohibited; and the right to conduct the business or

to pursue a calling may be conditional. Regulation of a business to prevent waste of the State's resources may be justified."

Thus, since it can be shown that State resources are being wasted through the failure of landlords and tenants to make certain types of improvements which conserve tenant-operated farms, State legislatures are justified in encouraging these improvements by making provision for compensation when the tenant leaves the farm.

Although landlords have not as yet been required to compensate tenants for improvements with the objective of conserving natural resources, nevertheless the property rights of landowners have been regulated in numerous instances to prevent the waste of other natural resources. Thus, statutes have been upheld prohibiting waste of natural gas and crude oil, both where physical waste was involved, as in Townsend v. State, 147 Ind. 624, 47 N. E. 19 (1897), and where economic waste was involved, as in Champlin Refining Co. v. Corporation Commission of Oklahoma, 286 U. S. 210 (1932). This power of the States to regulate the petroleum industry has been placed by the California Supreme Court, after an analysis of the decisions in other States, on the basis of the public interest in the conservation of natural resources rather than on the narrow ground that the interest of the other owners of oil in the common pool must be protected. People v. Associated Oil Company, 211 Cal. 93, 294 Pac. 717, (1930). This is not a unanimous view, however, and the Supreme Court of Montana in Gas Products Company v. Rankin, 63 Mont. 372, 207 Pac. 993, (1922) held that gas was the absolute property of the owner and consequently he had the right to waste it.

Again, the property rights of individuals have been restricted owing to the interest of the public in improving production conditions in agriculture. To this end a statute requiring the destruction of cedar trees in order to prevent the spread of cedar rust to apple trees was upheld in Miller v. Schoene, 276 U. S. 272, (1928), and the destruction of crops in order to check the spread of corn borers was upheld in Van Guten v. Worthley, 25 Ohio App. 496, 159 N. E. 326 (1927).

Extensive steps have been taken also by the States in connection with the prevention of waste of water resources, which in irrigation and semi-arid areas, are similar in nature to soil resources. Thus, in Eccles v. Ditto, 23 N. M. 235, 167 Pac. 726 (1927) the Court permitted the foreclosure of a lien by State officers who had done work to prevent the waste of water from an artesian well on the farmer's land. The Court relied upon an earlier California case, ex parte Elam, 6 Cal. App. 233, 91 Pac.

811 (1907), in which a similar California statute was upheld, and upon the oil conservation cases. In the New Mexico case the Court said:

"Evidently the legislature was of the opinion that this provision was necessary in order to conserve the Artesian water of the State for the purpose of irrigation and other beneficial uses; that it was competent for it to so legislate to conserve these natural resources, is well established by the adjudicated cases."

It would appear that there is no essential difference between compulsory compensation to State officers for doing work necessary to conserve the natural resources of the State, and compulsory compensation to tenants for doing similar work actually necessary for the conservation of the natural resources in the general public interest.

Only one case has been decided with regard to the propriety of legislation directly compelling soil erosion control work on farms. In this case, Kansas v. Hardwick, 144 Kans. 3, 57 Pac. (2d) 1231 (1936), the Kansas Supreme Court held the Kansas Soil Conservation Act unconstitutional because it empowered counties to legislate on a State-wide matter, and this was held to violate a provision peculiar to the constitutions of Kansas and a few other States, defining the powers which may be conferred upon counties in those States. The decision, however, does not affect the constitutionality of other methods which the legislature might adopt to secure the construction of soil conservation improvements, or even the validity of authorizing the same control methods to be administered by agencies other than counties.

A most important landlord and tenant relation which has been held to be subject to statutory regulation under proper circumstances pertains to the fixing of rental rates. Thus, in Block v. Hirsch, 256 U. S. 135 (1921), liberty of contract was considerably restricted by the statute controlling the amount of rent which tenants were to pay in the District of Columbia at that time, and it was upheld, and in Levy Leasing Company v. Siegel, 230 N. Y. 634, 130 N. E. 923 (1920) a similar New York statute regulating rents was upheld. The courts specifically overruled the contention that to prevent an owner of property from securing the maximum profit was necessarily unconstitutional in that it deprived him of his property rights without due process of law. The rent cases are additional evidence which undoubtedly shows that the possibility exists for regulating landlord and tenant relationships under proper circumstances. While the economic situation resulting from tenant farms not being adequately supplied

with essential improvements is somewhat different from the housing situation which existed when the legislatures so completely regulated landlord and tenant relations and the courts upheld such regulations, it appears that it would be possible to show that the economic and social consequences of such legislation are so closely related to the public interest that landlord and tenant relations of this type are not only appropriately subject to legislative control, but that they should be adequately regulated in the public interest.

In addition to these adjustments, it appears that in case a landlord gave his consent to the construction of an improvement by the tenant and did not reimburse him for it, he could be required by a State statute to compensate the tenant for the unexhausted value of the improvement at the termination of the lease. It is a fundamentally different situation from the present one in some States which permits the landlord to permit or even to encourage the tenant to make the improvement, and at termination require the improvement be left on the farm without reimbursement for the unexhausted value.

It appears quite proper and constitutionally permissible, to improve the agricultural leasing system in this country by following any or all of the following procedures: (a) permit the farm tenant to remove at the termination of the lease all agricultural improvements and fixtures erected by him; (b) place the responsibility for repairing all rented property upon the landlord, providing that if the landlord does not effect the repairs after reasonable opportunity, the tenant may either effect them and look to the landlord for reimbursement or occupy the premises and hold the landlord responsible for damages; (c) require that if the landlord give his consent to the making of an improvement or the erection of an agricultural fixture, the tenant may require that the landlord compensate him therefor at the termination of the lease; and (d) when the public interest is involved, require that the landlord reimburse the outgoing tenant for the unexhausted value of improvements and fixtures which it is physically or economically impossible to remove. The first three adjustments are very likely to be held constitutional by most of the courts. The constitutionality of the last adjustment will depend upon whether conditions in the particular States can be shown to be such that the proposed limitation is really necessary to protect the public interest.

Compensation for Deterioration

Since the early period of the common law, certain classes of tenants have been bound not to commit damages to the premises which

they occupy. By early common law, however, actions of waste did not lie against tenants who rented land under contract with the landowner, but only against tenants by curtesie, tenants in dower, and guardian in chivalry (Coke's Littleton, Section 53a). Because tenants of these classes were in possession of the land by operation of law and without the consent of the landowner, it was necessary to protect the property by law. It was apparently assumed that the landlord could sufficiently protect his property by contract when the tenant held the property under lease in much the same manner as it is apparently assumed today that the tenant can protect improvements which he makes by contractual arrangements with the landlord. By the Statute of Marlbridge (52 Hen. 3rd, Chapter 23, Section 2 (1267)) and the Statute of Gloucester (6 Edw. 1st, Chapter 5 (1278)), however, tenants for years were prohibited from committing waste. The doctrine of waste, under these statutes, prohibited any change in the condition of the property. This doctrine was carried to America as part of the common law, but most American courts, in order to adapt it to conditions in this country, adopted the principle that the tenant might make changes which would benefit the property. Thus in Clemence v. Steere, 1 R. I. 272 (1850), the court said:

"If in this case the change injured the farm or was such a change as no good farmer would make, it was waste . . . It is said that the pastures were permitted to be overgrown with brush. In England that would be waste; but you would not expect so high a state of cultivation in Burrellville as in England or as in the vicinity of a populous city. There must be such neglect in cutting the brush as a man of ordinary prudence would not permit and if there was in this case such neglect it is waste."

In the early days the American courts went so far in adapting the doctrine of waste to conditions in this country that one text writer has said that where local custom justifies, it would not be waste for a tenant to cut over timber land, farm it until it was exhausted, then clear new timber land and allow the old farm to grow up into brush so that the leaves and brush would eventually restore the fertility of the soil. (27 R. C. L. 1017). Thus, the doctrine of waste generally affords no protection against exhaustion of the soil through customary farm practices even though they are undesirable.

The extent to which an American court will follow local customs, even though they are bad farming practices, is illustrated by the case of King v. Miller, 99 N. C. 583, 6 S. E. 600 (1888). In this case the defendant, a life tenant, cleared additional land

on the farm as land already under cultivation became exhausted. The court held testimony admissible to the effect that this practice, which exhausted the soil on the farm, was in accord with the customs of the country and was necessary to insure a good living to the life tenant. It was held by the court to be admissible upon the ground that the alleged waste, although waste in fact, was necessary and rebuttable because the customs of the country had been followed in the farming practices adopted. On the other hand, in the same year, the Virginia court, in the case of Hubble v. Cole, 85 Va. 87, 7 S. E. 242 (1888), was governed by considerations more in line with modern ideas of proper farm practices. In this case, in refusing an injunction against the plowing up of a piece of sod land, the court said, at page 92 of 85 Va.:

"We cannot see any reason why it would be bad husbandry to plough up this piece of ground because it is sod land any more than any other piece of sod land; and it clearly appears from the evidence that it was not only the best piece of corn land on the place but of all fields the most easily reset in grass after tillage. It appears to be the best husbandry to plough this and leave the sod on land liable to wash when broken up and difficult to reset in sod. As the custom of the country is to plough up the sod alternately and cultivate in corn, and all the grass fields on this place have been from time to time so used, it would not be presumed that the parties to this contract intended to exempt any one or more of such fields from their contract unless they so stated in that instrument."

It is generally held by the courts to be an implied term of agricultural leases that the farmer will cultivate the land according to the rules of good husbandry and not commit waste. In determining what constitutes good husbandry or waste, local customs and conditions are important, and a thing may be considered as damage in one locality and not in another. Nominal damage and slow gradual deterioration have not been generally regarded as sufficient to support an action for waste. Such an action is usually confined to significant acts which leave the farms in an appreciably worse condition than when received. Some courts regard failure to cultivate according to the rules of good husbandry as waste, while others take the view that it is merely a violation of an implied term of the lease. In connection with the doctrine of good husbandry, the Supreme Court of Pennsylvania said, as early as 1851, in Lewis v. Jones, 17 Pa. St. 262:

"It is implied from the letting of a farm for

agricultural purposes that the tenant will cultivate the land according to the rule of good husbandry. This is as much a part of the contract as that he shall deliver up possession at the end of the term, or that he shall do no waste.

"Tenants for short or uncertain periods under the temptation of a rule of law which encourages bad husbandry would be adopting practices (each in self-protection) which no one would adopt with regard to his own land. Such a tenant would feel no interest whatever in preserving the fertility of the soil for the benefit of those who might succeed him. He would be prompted by the incentive of avarice to strip the land of everything which the law permitted him to carry off. The practice would become general, and the result would be that all the farms in the commonwealth under cultivation by tenants for years would be impoverished; the tenants themselves receiving no adequate remuneration for their labor and the landlords no rent for their farms. It is manifest that such a course of husbandry would be injurious to the public interest and ruinous alike to landlords and tenants."

The difference between waste and deterioration under a statute and the common law requirement that farms be cultivated according to the rule of good husbandry is illustrated by two Delaware cases: In the case of Richards v. Tarbut, 3 Houst. (Del.) 172 (1865), it was held that it was not waste under the statute to plant a field in corn three years in succession, but in a later case, Wilds v. Layton, 1 Del. Ch. 226, (1882), to plant a field in corn for two years in succession, was held a violation of the common law obligation to farm in accordance with the rules of good husbandry. In this latter case the court said:

"Any abuse of the land by the tenant, which tends to its injury, ought to be restrained. The working of a field two years in succession in Indian corn is reputed to be highly injurious."

In addition to the precedents requiring proper cultivation of fields and the rotation of crops, it was held in Cole v. Bickelhaupt, 64 A. D. 6; 71 N. Y. S. 636 (1901), that it was a violation of the rules of good husbandry to allow an orchard to grow up to weeds; and it was also held in Chapel v. Hull, 60 Mich. 167 (1886), that it was waste to plow up all the meadow land on a farm.

Thus it appears that from a very early period landlords

have been protected to some extent against abuse of farms by their tenants, and that this protection still exists. In actual practice, however, it is evident that illegal deterioration or waste does not arise from year to year depletion of the soil, from wear and tear which is a little above normal, or from a gradual accumulation of noxious weeds and shrubs. It is deterioration and waste of these types which have done so much to cause tenant-operated farms to be more seriously depleted and in a poorer state of repair than owner-operated farms, and such deterioration is practically impossible to prevent under present State statutes and legal procedure. The present statutes, although supposed to protect the demised property against deterioration, do not in actual practice prevent more than the most flagrant cases of damage. It appears that tenants should be prevented, through appropriate statutory provisions, from permitting their farms to deteriorate. Furthermore, it appears that considerations of fairness and equity require that if tenants are to be held responsible for deterioration, they should be allowed to claim an offset where they in other respects improve the farms. In fact, it appears that the ineffectiveness of the present statutes regarding waste is due, in large part, to the absence of supplementary statutes regarding improvements.

The laws of waste and of good husbandry furnish the proper legal and constitutional background for effective legislation preventing deterioration. It would require only slight extensions of these doctrines to require tenants to leave their farms in the same condition of soil fertility and productivity in which they found them. The legislature has full power to make this adjustment in the rights of the tenant and the rules of common law. Of course, this can be done only with regard to future contracts. Consequently, there appears no reason why each State could not by statute prescribe such laws regarding waste and such rules of good husbandry as would effectively prevent deterioration.

Compensation for Disturbance

From the earliest times it has been recognized that in the case of agricultural leases it is impracticable for the landlord to have the same right to terminate them that he has with regard to leases of other property. This concept is based upon the fact that crops must be grown upon an annual basis. Even though the common law recognized agricultural "tenancies at will", it also recognized a right to emblements in the tenant which allowed him to harvest crops which he had planted. This right generally did not extend to leases for a definite term, since in contracting for the term of the lease the tenant could make it for a long enough period to permit him to harvest his crop. The common law

right to emblements is described in Coke's Littleton, section 55a:

"If the leasee soweth the land, and the leasor, after it is sown and before the corn is ripe, put him out, yet the leasee shall have the corn, and shall free entree, egress and regress to cut and carry away the corn, because he knew not at what time the leasor would enter upon him."

At the present time, when a lease expires, the tenant's interest in the property ceases except for the right to emblements under particular circumstances. The landlord may or may not enter into a new lease, being restricted only where he has given an optional renewal in the original lease. This situation has resulted in tenants' being loath to perform such functions as would improve and conserve the farm, because they feel that they may not be able to stay upon the property long enough to secure a benefit from the improvements commensurate with their cost. For the same reason this condition has been influential in preventing tenant families from making the farm home more healthful and more homelike, and it has been an important factor in causing tenants to refrain from participating in the activities of the community, owing to their instability of occupancy and insecurity of tenure.

There has been little attempt to justify regulation of agricultural leases except in connection with statutory provisions limiting their length on the ground that the State has more complete control over land tenure than over other business and social relations. The conception of liberty of contract refers specifically to the guarantee against deprivation of liberty without due process rather than to the guarantee against the restriction of property rights, while regulation of the length of leases might well be regarded as an interference with both liberty of contract and property rights. It is well established that the State may limit rights to property under its inherent right to regulate land tenures and liberty of contract under the police power if reasonable and exercised for the public welfare.

A leading instance of State regulation of the period of agricultural leases is in New York. The constitutional convention in 1846 limited agricultural leases to 12 years (New York Constitution, Article I, Section 13), in an effort to break up the prevailing system of land-holding in the State. Long-term leases then in general use were considered socially undesirable because they discouraged farm ownership and led to deterioration of the soil. This has always been recognized by the courts in interpretation of this provision. For example, in the

case of Stephens v. Reynolds, 6 N. Y. 454 (1852), the court explained the reason for the constitutional provision as follows:

"A large part of the manorial lands in this state were originally settled under leases in fee, leases for lives, or a long term of years. In other words, the proprietors, instead of selling their lands out and out to purchasers, demised them to tenants, for long periods of time, reserving an annual rent, in money, produce, or services. Experience proved that this mode of settling the country was prejudicial to the prosperity and interests of the State as a question of political economy. The proprietors owning the lands, and the tenants having only the usufructuary interest, subject to be lost by forfeiture, by a non-performance of any of the conditions of the lease, the latter felt none of the pride of independent ownership, and no desire to improve, by the best mode of cultivation, an inheritance which was liable to pass from them, or their descendants without a compensation. Impressed with the conviction of this truth, the framers of the Constitution of 1846, by a provision in the fundamental law, abrogated these tenures, and provided that no lease or grant of agricultural land for a longer period than 12 years thereafter made in which should be reserved any rent or service of any kind should be valid."

The constitutional power of New York to regulate the length of agricultural leases has never been challenged, nor was it denied that the State had power to regulate agricultural leases to secure the objective stated.

Statutory and constitutional provisions similar to the New York provisions were subsequently adopted in a number of other States, especially western States framing their constitutions after the New York Constitution was adopted. Their constitutionality has never been questioned, and litigation as to their applicability in particular cases has been rare. The courts have contented themselves with citing the historical origin of the provision and relying upon the early New York cases.

Maryland law permits tenants to redeem leases for a period of over 15 years by cash payments to the landlord, although there is no absolute prohibition on long leases. This legislation (Maryland Acts 1888, chap. 395) was upheld shortly after its passage in Stewart v. Gorter 70 Md. 242, 18 Atl. 644 (1889). It was again attacked in the recent case of Marbury v. Mercantile

Building Company, 154 Md. 438, 140 Atl. 836 (1928), on the specific grounds that legislation of this type deprived the landowner of property rights, and the liberty of contract guaranteed to him by the 14th Amendment to the Federal Constitution. While admitting that there were no United States Supreme Court decisions directly in point, the Maryland court held that such legislation was valid, relying upon the general powers of the Legislature and the widespread prevalence of such legislation. The court said:

"It has long been recognized as the right of the Legislature to change or limit the character of estates and tenures provided the Legislature did not affect rights which had become vested. Cooley's Constitution Limitations (8th Ed.) 745 et. seq. Stanly v. Colt 5 Wall. (72 U. S.) 119, 18 L. Ed. 502.

"There is nothing novel in the legislation limiting the duration of leases of land, which is an interference with the natural right of the individual to contract with his own as he will. New York, Michigan, Iowa, Minnesota and Wisconsin have limited the terms of leases of agricultural lands. Massachusetts, Alabama, California, North Dakota, South Dakota and Nevada have placed limits on the periods of time for which any land or building may be leased."

In view of these decisions it seems clear that the Legislature has power to regulate the term of agricultural leases.

It is well established that the Legislature, and indeed the courts on subjects not governed by legislation, may change a rule of property without infringing on any constitutional rights. As the Supreme Court of the United States said in O'Neil v. Northern Colorado Irrigation Company, 242 U. S. 20 (1916):

"Something more than a mere departure from a rule of property established by prior decisions would have to be shown before a party could be held to have been deprived of property without due process of law."

Equitable doctrines have developed to provide remedy for situations where statute law is silent and where substantial miscarriage of justice results. Compensation for disturbance (and also for deterioration and improvements) may well be considered under the light of a parallel to the right of removal of agricultural fixtures, already secured by statute in some jurisdictions, and the right to regulate the length of agricultural leases. Hence, under the recognized construction of equitable

doctrines, compensation may be considered as analogous to these types of regulations, and equity will therefore recognize its validity.

There has also been wide-spread statutory regulation relating to the minimum length of agricultural tenancies, but these regulations have not been directed toward the solution of any of the present tenancy problems as above outlined. They have been limited to statutes defining the crop year, thus assuring tenants ample time to remove their crop after harvest, while at the same time assuring incoming tenants an opportunity to enter the land in time to plant a new crop. An example of this type of regulation is found in the Iowa Code, which by section 10160, provides that all agricultural leases must expire on March 1, except that cropping agreements may expire on December 1. Up to the present time there has apparently been no other type of legislation directed against the evils of agricultural leases for too short a period of time.

It would seem on the authority of these cases that if the legislatures have a right to interfere with leases which are against public policy because of their being of too long duration, and have the right to set the month and day upon which leases shall terminate so they will not be too short, they also have the right to interfere with agricultural leases which have an adverse effect upon the prosperity of rural areas because they are of such short duration that it is impossible to plan farming operations properly and to conserve the soil resources. This would be done, of course, only as long as the interference is not arbitrary and capricious and is one reasonably required in order to serve the public interest in the industry of farming.

Since the land has been cultivated so long that much of its virgin fertility has been depleted, efficient farming which will conserve the soil resources must be planned for periods longer than from year to year. A farmer who would conserve his soil must plan crop rotations as a part of a long-time program. In addition, if he desires to raise livestock, the livestock enterprises must be planned on a still longer basis. Furthermore, livestock will not mature within a year, and, consequently, the same arguments which have been used in the past to get for the tenant farmer a lease for an entire crop year might, with equal force, be used to require that the tenant farmer raising livestock be given a lease for an even longer period. Likewise a statute regulating the minimum length of agricultural leases may be substantiated by arguments similar to those used to substantiate legislative action preventing leases from being of too long duration. It would seem, moreover, that a court would regard such a statute as reasonable if it contained a provision that the land-

lord or the tenant could terminate the lease, at the end of any crop year, by the giving of sufficient notice and by paying the other party for the reasonable loss experienced owing to the premature termination of the lease. Obviously, either party should be permitted to terminate the lease when the other party has not fulfilled his part of the contract. In addition, there are several other situations under which it should be possible for either party to terminate the lease. These conditions were more fully discussed in a preceding chapter.

The impossibility of planning on a year-to-year basis and the suggestion that advantages are to be gained from longer term agricultural leases is further substantiated by the program of the Soil Conservation Service, which is based upon a five-year contract for each individual farm. The Government's soil conservation and improvement programs would be made more effective if tenant farmers were assured a longer term of occupancy, and would be applicable to more farms if at the same time tenant farmers were assured just recompense for erosion control devices and for improvements to the soil resources made during their occupancy of the farm.

By thus increasing the length of the agricultural lease, and by regulating the conditions under which it may be terminated, the right of either party to terminate the lease at the end of any crop year would be lightly modified, but the right of either to grant or refuse a renewal of the lease at its final expiration would be fully preserved.

SUMMARY AND CONCLUSION

Under the present system of leasing farm land from year to year the tenant is seriously handicapped in organizing and managing the farm on a long-time basis, and he is not free to arrange the production enterprises so as to conserve and improve the farm resources. If he develops a system of crop rotation which is adapted to the farm and plans the livestock enterprises on the basis of that crop rotation, it is almost certain that his lease will expire before the plans have been carried into effect and before he has received sufficient returns to reimburse him for the superior and the more conservative system of farming. If the tenant significantly increases the fertility of the soil by the addition of limestone, fertilizer, manure, or soil-improving crops, he will have to leave the increased fertility on the farm when his lease is terminated, and will receive no consideration for the increased value of the farm. If the tenant makes essential and worthwhile improvements to the farm buildings, fences, roads, drainage system, erosion control devices or water supply system, the same situation will exist.

What are the consequences of such leasing conditions? They are simply this: Many tenant farmers do not properly rotate crops, neither do they coordinate their livestock and their crop enterprises. They add only negligible quantities of limestone and fertilizers in comparison with what they should use, and they do not conservatively utilize the manure produced on the farm. They seldom make essential physical improvements. Consequently, many tenant farms decrease in fertility year after year, many of them are seriously eroded, and their buildings and fences are in a poor state of repair.

Furthermore, under the present farm tenancy system the tenant-operator cannot make certain improvements which pertain directly to the farm home, garden, and orchard with an assurance that he will be reimbursed for their unexhausted value when he quits the farm. If the tenant paints the house, adds screen doors and windows, or puts new paper on the walls, he will probably not receive adequate compensation for his labor and expense. Generally, if the tenant installs electric lights or a running water system with a bath tub, he must leave them on the farm, without compensation, when he moves to another farm. If he landscapes the farm home by adding shrubs and flowers, he cannot take them with him when he leaves the farm, and the tenancy system does not include a method whereby he is reimbursed for them. What are the results of such practices? Farm tenant homes are not adequately supplied with many modern essentials. They are not

kept in a good state of repair, and are not properly landscaped.

In addition, tenant farmers and their families cannot adequately participate in the various activities of the community, neither do they have sufficient opportunity to attend school and church regularly. If the tenant and his family join a social club, if they become members of the various farmer organizations, and if they establish social connections, the lease is likely to expire about the time they become well established in these new relationships. If the tenant's children are attending school and the lease is terminated, they must change schools in the middle or latter part of the school year. Church affiliations are subject to the same type of disturbance.

What are the resulting consequences? Tenants do not adequately participate in the social and economic life of the communities in which they live. Their children are seriously handicapped in their struggle for an education. Tenants and their families attend church less frequently than they would if they were more stable and secure. In addition, many tenant communities are not properly integrated, and community life in rural America lacks much to be desired.

A further serious defect in the tenancy system is the ineffectiveness of present leasing provisions and statutory regulations in preventing deterioration and waste. If the tenant encourages erosion through the depletion of the organic matter in the soil, if he permits serious gully erosion by not providing for or keeping up erosion-control devices, if he does not keep drainage facilities open, and if he lets the fences run down and the buildings become dilapidated, there is little that the landlord can do except get another tenant who will operate the farm in about the same manner. Of course, if the tenant commits waste or through positive action causes damages representing a considerable sum, the landlord may sue him for damages in the courts. It is not instances of enormous waste, however, which are causing the constant year to year deterioration of tenant-operated farms. Thus, this continuing depletion of the resources on tenant farms exists chiefly because the laws are not designed to prevent it. Consequently, many tenant farms deteriorate gradually year after year, and the cumulative effect is serious.

The above conditions, although not existing on all tenant-operated farms, are sufficiently widespread to be of vital interest to the public. They are due largely to the absence of adequate provisions in the leasing contract and in the statutes governing landlord and tenant relations. Some people have held to the opinion that such relations are matters of little concern to

the public. It appears, however, that both the conservation and the improvement of the soil and the other resources on tenant-operated farms, that the safeguarding of the physical, mental, and spiritual health of the rural population, and that the preservation and the development of worthy rural institutions, are matters vitally affected with a public interest. Therefore, it appears that the public should take the initiative in improving the tenancy system. This initiative can well follow either or both of two procedures -- education and legislation. Compensation as a means of improving landlord and tenant relations is adaptable to either type of procedure.

For many years compensation has been used by leading landlords in this country as a means of improving the contractual relations with their tenants. It was not until about two decades ago, however, that its use was sufficiently widespread to attract the attention of those interested in the intricate problems of leasing farm land. Since that time the major studies dealing with farm leasing problems have invariably recommended the use of compensation. Significant improvements have been effected in many leases by following these recommendations.

Compensation is usually divided into three major categories -- compensation for improvements, compensation for deterioration, and compensation for disturbance. The first refers to the payment which is made by the landlord or by the incoming tenant to the outgoing tenant for the unexhausted value of the improvements which the outgoing tenant made during his occupancy of the farm. Compensation for deterioration refers to the payment which is made by the tenant to the landlord for any damage, deterioration, or dilapidation which the tenant may have committed or permitted during his occupancy of the farm. Compensation for disturbance refers to the payment to the landlord or to the tenant for any damage or loss which may be caused by an undue termination of the lease or an unreasonable refusal to renew the lease.

When all three categories of compensation are provided in the contract or through State statutes, the following conditions will exist: The tenant will make specific improvements to the farm and conserve its resources in a manner very similar to the owner-operator, and when the lease is terminated he will receive reimbursement to the extent of their unexhausted value about the same as an owner-operator would through the increased market price of the farm if he were to sell. Of course, if, during his occupancy of the farm the tenant permits deterioration or commits waste, a sum representing the amount of the damage will be deducted from the sum due him for improvements. Or, if he has made no improvements he will pay the landlord the sum represent-

ing the waste. Thus, the tenant would experience a loss about the same as an owner-operator would if he committed or permitted waste. Therefore, he will take about the same attitude toward the farm as does the owner-operator. Furthermore, if the lease were unduly terminated or if one of the parties should unreasonably refuse to renew it, the offending party must compensate the other party to the extent of the loss or damage experienced owing to the disturbance. Such adjustments will place the tenant-operator in a position as much like that of the owner-operator as is reasonably possible.

These means of improving the farm tenancy system are not novel and untried. As pointed out, they have been used successfully in this country by leading landlords and tenants. In addition, the utilization of compensation in its various phases has proved very much worthwhile in improving landlord and tenant relations in several foreign countries. Most notable among these have been England, Wales, and Scotland. In these countries compensation was first introduced by the better landlords and tenants and was later made compulsory through well planned and equitably administered statutes. Because of the close historical relationship and legal similarity of American leasing conditions to those of England, Wales, and Scotland, it is quite clear that the widespread use of compensation would be a significant step toward improving the farm tenancy system in the United States.

Compensation for improvements and compensation for deterioration are much more effective when used together than when used separately. Under such a situation it is the net change in the condition of the farm which is the basis for compensation. The landlord is not permitted to maintain the paradoxical position of requiring the tenant to compensate him for deterioration and at the same time failing to compensate the tenant for improvements. Neither is the tenant permitted to take an analogous position.

Compensation would probably be more effectively applied to cash leases than to share leases. Under the cash lease the tenant usually maintains more control over the operation of the farm and receives the entire benefit of the improvements during the time he operates it. With a system of compensation cash tenants would generally make more improvements and would probably be influenced more effectively toward preventing deterioration than would share tenants. It is clear, however, that compensation is adapted to the share-renting system, except to that category of share tenants in the South who are popularly known as "sharecroppers". Owing to their low economic status and their unfamiliarity with management and long-time improvement problems, they

would be affected but little, if at all, by compensation for improvement and deterioration. They would, however, like all other classes of tenants, be benefited by compensation for disturbance.

The whole question of improving landlord and tenant relations is closely enmeshed in and influenced by statutory regulations and constitutional provisions. The general legal theory and practice that agricultural tenants shall not at the termination of the lease remove trade fixtures and other improvements has been a serious handicap to many tenants. Even though this practice is distinctly prejudiced in the landlord's favor, it has been of but little value to him, and generally it may be said that it has reacted against him. The common law rule and the present ineffective statutory provisions against waste have not prevented serious deterioration on many tenant-operated farms. Statutes governing the length of agricultural leases have not encompassed the most fundamental problems pertaining thereto, and consequently, at the time of the last decennial census, over one-half of all the tenant-operators in the United States had been occupying their farms for a period of only one year or less. Such ineffective and incomplete statutes have done but little to adjust in an effective manner landlord and tenant relations. Economic and social maladjustments resulting from inequitable leasing arrangements have not been brought within the scope of progressive legislative action, and the public interest, therefore, has not been adequately safeguarded.

It is impracticable in this country, owing to constitutional limitation, for the Federal Government to adopt legislation requiring compensation for improvement, deterioration, or disturbance. It is possible, however, for the various State legislatures to regulate landlord and tenant relationships with reference to any matter which is affected with a public interest. The determination as to which landlord and tenant relations are fit subjects of statutory regulations and the degree to which they can be regulated is a matter which can be determined definitely only before the courts. It appears that the nature and extent of the legislation which will be permitted will depend largely upon whether the proposed limitation is really touched with a public interest in light of the conditions surrounding the landlord and tenant relation to which the legislation is addressed.

One regulation which could hardly be questioned, however, and which would prove worthwhile, would provide that the removal of all agricultural fixtures and improvements was permissible under the same rules which pertain to trade fixtures made by businessmen and to fixtures and improvements made by gardeners and nurserymen. This regulation would permit tenants to effect improvements and to remove them when the lease was terminated.

Furthermore, existing rules with reference to good husbandry and waste may be made effective by providing that any payment for damage or deterioration should be offset by any improvements effected. An extension of this procedure would require that any payment for improvement effected should be offset by any deterioration, dilapidation, or waste which had been permitted or committed. In case of improvement without deterioration, or in case of deterioration without improvement, the statute should require payment in full. Owing to the present minimum and maximum regulations as to the length of agricultural leases, it appears that the various States could require that all agricultural leases be drawn for a period of at least five years, terminable at the end of any crop year upon the payment of damages for disturbance, and further terminable without payment for disturbance when certain obvious conditions exist.

Even without legislative action an ever increasing utilization of leasing agreements which provide compensation for unexhausted improvements appears inevitable. Compensation for improvements will become more widely diffused as landlords and tenants learn of this method of improving their relations, and as experience indicates what adjustments in the compensation provisions should be made and which types of provision are the most valuable. Without legislative action, however, the increase in the utilization of compensation will be very slow, unless a conscious effort is made to inform landlords and tenants of the value of compensation, and unless constant readjustments, in light of the experience of the better landlords and tenants, are made in the manner in which compensation is used.

A few decades ago very little limestone was used by farmers in the United States. Today many farmers know of its value and have a rather clear concept of the circumstances under which it is needed and how it should be used. Such would not have been the case but for the research and educational endeavors of a large number of agricultural research and extension workers. Likewise, compensation will prove valuable in solving many present day leasing problems if adequately fostered by an educational program which is based upon research, and which is readjusted and expanded as the experience of a large number of landlords and tenants points the way. On the other hand, the use of compensation for improvements will be confined to a very small number of landlords and tenants if a laissez-faire policy is maintained, and if each landlord and tenant has to perform his own research and do his own experimentation with respect to improving his leasing arrangement. Compensation for deterioration will probably develop more slowly than compensation for improvements, owing to the present makeshift statutes which are supposed to prevent

deterioration. Compensation for disturbance will be slow in becoming a part of the system of leasing agricultural land without compulsory statutes.

The various State agricultural colleges and experiment stations are in a position to perform an important service by prosecuting an extensive educational program for the improvement of leasing agreements. A small amount of research will need to be carried on concurrently with the educational program in order to make readjustments as new experiences and changing conditions indicate that such are fundamentally sound. The type of educational program which should be fostered by the agricultural colleges and the experiment stations may be very similar to their customary type of extension teaching, dissemination of literature, and demonstration of results obtained. The extension teaching may involve local discussion conferences of landlords and tenants. The dissemination of literature should involve the supplying of bulletins and lease forms. The demonstration of results may include field trips to farms operated by landlords and tenants who have solved many of their leasing problems.

The professional farm managers, who have under their control large numbers of tenant-operated farms, have an excellent opportunity to develop ideal leases through expanding their utilization of compensation. They may also perform a noteworthy service by making it possible for others to learn of successful adjustments which they have made in their leases.

The agricultural teachers in the rural high schools of many sections of the country should find the subject of farm leases an appropriate and interesting addition to their course of study. Suggested improvements in the farm leases should be of particular interest to their adult and evening classes.

The State departments of agriculture, when acting in an advisory capacity to State officials and lawmakers, should not overlook the opportunity to recommend additions to the State statutes with reference to farm leases. It appears that the leasing problems of the agricultural landlord and tenant are so different from those of the urban landlord and tenant that the State statutes regulating the two groups should be separate and distinct. This would not only clarify the position of the agricultural landlord and tenant but it would render it easier for them to make progress in adjusting their relations through legislative action. This is particularly true since the regulation of landlord and tenant relations is a matter left entirely to the various States.

The Federal government, however, can perform several important

functions in a program to improve landlord and tenant relations. It can provide a limited amount of assistance in the development of an educational program, in the formation of appropriate research projects, and in the preparation of approved lease forms. It can supply technical information to State legislatures with respect to adequate regulation of landlord and tenant relations, and the proper administration of such landlord and tenant statutes as are enacted. The Federal government can supply information as to the extent and probable growth of tenancy, and as to some of the more important problems involved in agricultural leasing. It can also perform a valuable service by making available to the various agencies mentioned above the experience of landlords and tenants in the utilization of compensation, and the experience of the various State legislatures in their regulation of farm leasing. In addition, the Federal government may bring within the scope of the soil conservation programs of the Agricultural Adjustment Administration and the Soil Conservation Service those phases of landlord and tenant relations which are closely related to those conservation programs, particularly those relations which have made these programs so essential; and it could also adopt a coordinated program which would approach the tenancy problem in two ways -- by reducing the proportion of farm operators who are tenants and by improving farm leases. This might be accomplished by restricting the former program to those States which adopt appropriate landlord and tenant statutes.

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APPENDICES

Appendix A

TYPICAL COMPENSATION PROVISIONS OF AGRICULTURAL LEASES USED IN THE UNITED STATES

COMPENSATION FOR UNEXHAUSTED IMPROVEMENTS PROVIDED FOR IN THE CROP-SHARE FARM LEASE PREPARED BY PURDUE UNIVERSITY, LAFAYETTE, INDIANA

Lessee to be Reimbursed for Limestone, Fertilizer, etc.

"In case of the termination of this lease before the lessee shall have secured the just benefits from any expense he may have in good faith put upon the farm, the lessor shall reimburse him to the amount such expense would benefit an incoming tenant.

"If raw rock phosphate or ground limestone has been applied during this lease, the lessee shall be reimbursed by the lessor for his share of such limestone or rock phosphate still in the ground as follows: If only one crop has been grown since the application the lessee shall receive three-fourths of his total expenditures for such material applied, including cost of handling the whole application; if two year's crops have been grown he shall receive one-half, and if three year's crops have been grown, one-fourth of said cost. The cost of hauling shall be considered _____ per ton. No reimbursement shall be made for limestone or rock phosphate after four year's crops have been grown.

"If acid phosphate, complete fertilizer, or other readily available fertilizer has been applied at the rate of three hundred pounds or less per acre, and one crop has been grown since its application, no reimbursement shall be made to the lessee for his share of such fertilizer, but if such fertilizer has been applied at the rate of more than three hundred pounds per acre and only one year's crop grown since the application, the lessor shall reimburse the lessee for fifty percent of the lessee's share of the cash cost of such fertilizer in excess of three hundred pounds.

"For applying barnyard manure, the lessee shall be reimbursed in full for a reasonable cost of applying (not including value of manure) in case he leaves the farm before a crop is grown on such manured land; in case one crop has been grown he shall receive one-half, and in case two crops have been grown he shall receive one-fourth, of the cost of applying such manure.

"The lessee shall be reimbursed for any large amount of work or large expense put on buildings, fences, or other improvements, when failure to receive same would be a manifest injustice to said lessee.

"From the reimbursement as determined above shall be subtracted \$_____ which is agreed as the value, figured according to the above rules, of one-half of the fertilizer and lime unused in the soil, and the cost of applying such material and applying manure still unutilized in the soil at the time the lessee takes possession of the farm. If this amount is greater than the amount the lessor should reimburse the lessee as determined above in this section, the two amounts shall be considered as balancing each other and no reimbursement shall be made.

"The lessee shall present in writing his claim for all reimbursement upon the termination of this lease, and if no agreement can be reached, the matter shall be submitted to three disinterested parties chosen as provided in section 14 of this lease. The decision of these arbitrators shall be final and binding upon the two parties to this contract."

COMPENSATION FOR UNEXHAUSTED IMPROVEMENTS PROVIDED FOR IN
THE STOCK-SHARE FARM LEASE PREPARED BY THE VIRGINIA
POLYTECHNIC INSTITUTE, BLACKSBURG, VIRGINIA

Payment of Unexhausted Improvements

"Section G. If this lease is terminated on _____ of any year by notice as herein provided, the landlord shall reimburse the tenant for:

"1. Plowing done in excess of area plowed at beginning of lease, at \$_____ per acre, and the tenant shall pay landlord at same rate if plowing left is less in area than that at beginning of lease. The tenant shall plow those fields in the fall before he leaves that he would ordinarily plow if he were going to remain on the farm.

"2. For any considerable amount of labor put upon repairs and improvements to the extent such labor results in leaving the farm in appreciably better condition than at the beginning of the lease.

"3. For any fertilizer purchased by the tenant which will appreciably benefit the farm after the tenant leaves, to the extent that such benefit is greater than what the tenant received from previously applied fertilizer when he moved on the farm. If the benefit is less than what the tenant received at the beginning of the lease the tenant shall pay the landlord the difference.

"4. _____

"5. The tenant shall present all such claims in writing at the termination of the lease."

COMPENSATION FOR UNEXHAUSTED IMPROVEMENTS PROVIDED FOR IN
THE STOCK-SHARE FARM LEASE PREPARED BY THE
UNIVERSITY OF NEBRASKA, LINCOLN, NEBRASKA

"The tenant shall be reimbursed for alfalfa or other crops seeded but not harvested before the termination of this lease, such reimbursements to be equal to what his share of the harvest would be less his share of the necessary expense in harvesting and marketing. The tenant shall also be reimbursed for any other labor or expense by him when failure to receive such compensation would be a manifest injustice to him, but this shall not apply to labor or expense by him in the erection of improvements, unless at the time such improvements are made the landowner shall have agreed in writing to make such reimbursements."

COMPENSATION FOR CLOVER SEEDING PROVIDED FOR
IN A LEASE USED BY A FARM MANAGER,
SPRINGFIELD, ILLINOIS

"It is further agreed that if the party of the first part pays for clover seed, that is seeded on this land according to the terms of this lease, which clover seed produces a fair stand in the spring of the year following the year that said clover seed is seeded, and if this lease expires, and the party of the second part is not farming said land during the year following the year that said clover seed is seeded, then it is hereby agreed

that the party of the first part shall pay the party of the second part for the actual cost of said clover seed (no labor included) for the portion of the clover seed which has produced a fair stand as above provided. It is further agreed that the actual cost of the clover seed shall be a fair market price for same at the time said clover seed was seeded."

COMPENSATION FOR SPREADING LIMESTONE PROVIDED
FOR IN A LEASE USED BY A FARM MANAGER,
ST. LOUIS, MISSOURI

"Second party is to spread lime free of charge to first party providing that if he is asked to give possession of farm at end of 1931 lease, that first party shall pay second party 50¢ per ton for all lime spread."

COMPENSATION FOR PLOWING PROVIDED FOR
IN A LEASE USED BY AN
INSURANCE COMPANY

"It is agreed between the parties that if the first party sells this farm after the wheat is sown in the fall the sale shall be subject to the tenants rights in the growing wheat crop, and should any ground, by agreement between the parties, be plowed for future sowing or planting at the time of said sale, the first party agrees to reimburse the second party at the rate of \$2.00 per acre, which shall be the second party's full compensation."

COMPENSATION FOR PLOWING PROVIDED FOR
IN A LEASE USED BY A LAND COMPANY,
MINNESOTA

"Upon the termination of this contract for any of the above cases, the owner shall pay the operator, or his representatives as the case may be, at the rate of \$1.75 per acre for any fall plowing in excess of the number of acres which were fall plowed when the operator entered upon the holding."

COMPENSATION FOR SEEDING LEGUMES PROVIDED FOR
IN A LEASE USED BY PRIVATE INDIVIDUALS,
INDIANA

"In case of the termination of this lease before the renter shall have secured the just benefits from any expense he may have

in good faith put upon the place, the landowner shall reimburse him to the amount such expenses would benefit an incoming renter. The renter shall be reimbursed for clover, or other crops seeded and not yet harvested, unless he is allowed to harvest such crops after the termination of the lease.

"The claim for alfalfa seeded and only harvested one year shall be based upon 1/2 of the cost of the renter's part of the seed. No claim shall be made for alfalfa seeded and harvested two years."

COMPENSATION FOR DISTURBANCE PROVIDED FOR
IN A LEASE USED BY PRIVATE
INDIVIDUALS, OHIO 1/

"It is further agreed by and between the parties that if the lessor shall terminate said lease at the end of the first year, then and in that event he shall pay to the lessee the sum of Two Hundred (\$200) Dollars as his damages, and if said lessor shall terminate said lease at the end of the second year, he shall pay the lessee the sum of One Hundred and Twenty-Five (\$125) Dollars as his damages."

COMPENSATION FOR IMPROVEMENTS PROVIDED FOR
IN A LEASE PREPARED BY
THE SOUTHERN RURALIST

"At the expiration of the term provided as the duration of this lease, the lessee shall be entitled to receive from the lessor a compensation, to be paid in money, for all necessary and legitimate improvements placed upon the demised premises by the lessee, and from which improvements the lessee has not already derived a substantial benefit. The value of such improvement to be determined by one or more persons familiar with land values, selected by the lessee and lessor. The parties thus chosen shall pass upon all claims for compensation presented by the lessee, and shall determine the amount to be allowed the lessee for all improvements made by him in accordance with the provisions hereinbefore expressed."

1/ Tichenor, W. C. FARM CONTRACTS BETWEEN LANDLORD AND TENANT.
W. C. Tichenor (publisher) Lebanon, Ohio. p. 206.

Appendix B

IMPROVEMENTS FOR WHICH COMPENSATION IS
PAYABLE IN ENGLAND AND WALES ACCORDING
TO THE
AGRICULTURAL HOLDINGS ACT OF 1923 1/

First Schedule

Part I

IMPROVEMENTS TO WHICH CONSENT OF LANDLORD IS REQUIRED

- (1) Erection, alteration, or enlargement of buildings.
- (2) Formation of silos.
- (3) Laying down of permanent pasture.
- (4) Making and planting of osier beds.
- (5) Making of water meadows or works of irrigation.
- (6) Making of gardens.
- (7) Making or improvement of roads or bridges.
- (8) Making or improvement of watercourses, ponds, wells, or reservoirs, or of works for the application of water power or for supply of water for agricultural or domestic purposes.
- (9) Making or removal of permanent fences.
- (10) Planting of hops.
- (11) Planting of orchards or fruit bushes.
- (12) Protecting young fruit trees.
- (13) Reclaiming of waste land.
- (14) Warping or weiring of land.
- (15) Embankments and sluices against floods.
- (16) Erection of wirework in hop gardens.
- (17) Provision of permanent sheep-dipping accommodation.
- (18) In the case of arable land the removal of bracken, gorse, tree roots, boulders or other like obstructions to cultivation.

(N.B. -- This part is subject as to market gardens to the provisions of the Third Schedule.)

1/ AGRICULTURAL HOLDINGS ACT, 1923.

Part II

IMPROVEMENT IN RESPECT OF WHICH NOTICE TO LANDLORD IS REQUIRED.

- (19) Drainage.

Part III

IMPROVEMENTS IN RESPECT OF WHICH CONSENT OF OR NOTICE TO LANDLORD IS NOT REQUIRED.

- (20) Chalking of land.
(21) Clay-burning.
(22) Claying of land or spreading blaes upon land.
(23) Liming of land.
(24) Marling of land.
(25) Application to land of purchased artifical or other purchased manure.
(26) Consumption on the holding by cattle, sheep, or pigs, or by horses other than those regularly employed on the holding, of corn, cake, or other feeding stuff not produced on the holding.
(27) Consumption on the holding by cattle, sheep, or pigs, or by horses other than those regularly employed on the holding, of corn proved by satisfactory evidence to have been produced and consumed on the holding.
(28) Laying down temporary pasture with clover, grass, lucerne, sain-foin, or other seeds, sown more than two years prior to the termination of the tenancy in so far as the value of the temporary pasture on the holding at the time of quitting exceeds the value of the temporary pasture on the holding at the commencement of the tenancy for which the tenant did not pay compensation.
(29) Repairs to buildings, being buildings necessary for the proper cultivation or working of the holding, other than repairs which the tenant is himself under an obligation to execute;

Provided that the tenant, before beginning to execute any such repairs, shall give to the landlord notice in writing of his intention, together with particulars of such repairs, and shall not execute the repairs unless the landlord fails to execute them within a reasonable time after receiving such notice.

Third Schedule

IMPROVEMENTS SUBJECT TO SPECIAL PROVISIONS IN THE CASE OF
MARKET GARDENS

- (1) Planting of standard or other fruit trees permanently set out.
- (2) Planting of fruit bushes permanently set out.
- (3) Planting of strawberry plants.
- (4) Planting of asparagus, rhubarb, and other vegetable crops which continue productive for two or more years.
- (5) Erection or enlargement of buildings for the purpose of the trade or business of a market gardener.

Appendix C

COMPENSATION VALUES OF FEEDING STUFF USED IN ENGLAND AND WALES 1/

Feeding Stuff	: Compensation value for each ton : of feed consumed before one crop : <u>has been sold or removed</u> <u>2/</u>		
	: Shillings	: Pence	: Dollars <u>3/</u>
Decorticated cotton cake	: 48	: 3	11.99
Undecorticated cotton cake (Egyptian)	: 28	: 11	7.19
Undecorticated cotton cake (Bombay)	: 26	: 6	6.59
Linseed cake	: 33	: 0	8.20
Linseed	: 26	: 0	6.46
Soya-bean cake	: 44	: 7	11.08
Palm-nut cake	: 16	: 10	4.18
Coco-nut cake	: 26	: 11	6.69
Earth-nut cake	: 47	: 8	11.85
Rape cake	: 35	: 2	8.74
Compound cakes, meals, etc.	:	:	:
15 to 20 percent Albuminoids	: 23	: 4	5.80
20 to 25 percent Albuminoids	: 27	: 1	6.73
25 to 30 percent Albuminoids	: 30	: 10	7.66
30 percent Albuminoids	: 36	: 11	9.17
Beans	: 26	: 11	6.69
Peas	: 23	: 2	5.76
Wheat	: 12	: 8	3.15
Barley	: 11	: 9	2.92
Oats	: 13	: 0	3.23
Maize	: 11	: 1	2.75
Rice meal	: 12	: 1	3.00
Locust beans	: 10	: 6	2.61
Malt	: 12	: 11	3.21
Malt culms	: 30	: 9	7.64
Bran	: 25	: 6	6.34
Brewers' grains (dried)	: 20	: 9	5.16
Brewers' grains (wet)	: 5	: 2	1.28
Clover hay	: 18	: 4	4.56
Meadow hay	: 13	: 10	3.44
Wheat straw	: 5	: 5	1.35
Barley straw	: 5	: 8	1.41
Oat straw	: 6	: 4	1.57
Mangels	: 2	: 7	.64
Swedes	: 2	: 2	.54
Turnips	: 2	: 0	.50

1/ Davies, C. E. AGRICULTURAL HOLDINGS AND TENANT RIGHT, p. 303.

2/ The value after one crop has been grown or removed is one-half of the value shown here.

3/ Calculated on the basis of the power of exchange of the pound sterling for March 1936 as \$4.97.

Appendix D

COMPENSATION VALUES OF FERTILIZERS USED IN ENGLAND AND WALES 1/

Fertilizers	: Proportion of original cost after re-								
	: <u>moval of specified crops</u>								
	: On arable land::			On grass land 2/					
	: 1st	: 2nd	: 3rd	: 1st	: 2nd	: 3rd	: 4th	: 5th	
Superphosphate	: 2/3	: 1/3	: 1/6	: 2/3	: 1/3	: 1/6	: ---	: ---	
Basic slag, Ground Phosphate	: 2/3	: 1/3	: 1/6	: 5/6	: 2/3	: 1/2	: 1/3	: 1/6	
Bones (raw and steamed)	: 2/3	: 1/3	: 1/6	: 2/3	: 1/2	: 1/3	: 1/6	: ---	
Dissolved Bones	: 1/2	: 1/4	: 1/12	: 1/2	: 1/4	: 1/12	: ---	: ---	
Bone Manures	: 2/5	: 1/5	: ---	: 2/5	: 1/5	: ---	: ---	: ---	
Compound Manures not Con-	: :	: :	: :	: :	: :	: :	: :	: :	
taining Bone	: 1/3	: 1/6	: ---	: 1/3	: 1/6	: ---	: ---	: ---	
Peruvian Guano	: 1/3	: 1/6	: ---	: 1/3	: 1/6	: ---	: ---	: ---	
Fish Guano	: 1/3	: 1/6	: ---	: 1/3	: 1/6	: ---	: ---	: ---	
Meat Meal	: 1/3	: 1/6	: ---	: 1/3	: 1/6	: ---	: ---	: ---	
Shoddy and Wool Waste, Fur	: :	: :	: :	: :	: :	: :	: :	: :	
Waste, Hair, Hoofs, and	: :	: :	: :	: :	: :	: :	: :	: :	
Horns, Greaves, etc.	: 1/2	: 1/4	: 1/8	: 1/2	: 1/4	: 1/8	: ---	: ---	
Manure Cakes	: 1/5	: 1/10	: ---	: 1/5	: 1/10	: ---	: ---	: ---	
Dried Blood, Sulphate of	: :	: :	: :	: :	: :	: :	: :	: :	
Ammonia, Nitrate of Soda,	: :	: :	: :	: :	: :	: :	: :	: :	
Nitrate of Lime, Cyanamide:	None:	: :	: :	None:	: :	: :	: :	: :	
Kainit and Potash Salts	: 1/2	: 1/4	: ---	: 1/2	: 1/4	: ---	: ---	: ---	
Lime	The cost of 4 cwt. of pure lime, or 7 cwt. of carbonate lime (chalk) to be deducted per acre each year after application until the amount originally applied is exhausted. This is to be independent of the amount of pure lime or chalk applied.								

1/ Davies, C. E. AGRICULTURAL HOLDINGS AND TENANT RIGHT, p. 293.

2/ The valuer must exercise his discretion as to the suitability of these manures when used upon grass land. When grass land is mown, this is equivalent to the "removal of a crop" and the values as set out for arable land would apply.

